Supreme Court, U.S.
FILED

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No. _____

In The
Supreme Court of the United States
October Term, 1998

MARY G. KERGER,
Petitioner,

v.

BOARD OF TRUSTEES OF COMMUNITY COLLEGE DISTRICT NO. 502, County of DuPage and State of Illinois, a/k/a COLLEGE OF DUPAGE
Respondent.

On Petition For A Writ of Certiorari To The Illinois Supreme Court

---

PETITION FOR A WRIT OF CERTIORARI

Mary G. Kerger, pro se
1908 Cromwell Drive
Wheaton, Illinois 60187
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32 pp

Questions Presented For Review
[Rule 14(1.)(a)]

Did the Illinois Supreme Court Err in Determining Petitioner Mary G. Kerger was not denied her constitutional right to procedural due process of law during and within the adjudicatory process by the Illinois Appellate Court where:

1) the Opinions of the Illinois Appellate Court manifested clear and blatant bias against her;

2) the Illinois Appellate Court imposed, in direct violation of the Illinois Supreme Court rule regulating and restricting imposition of sanctions by such rule's requirement of prior notice and opportunity to respond, the sanction of striking the text of the controlling substantive teacher tenure statute;

3) the Illinois Appellate Court repeatedly refused to address or even mention the controlling substantive teacher tenure statute in affirming the trial court's denial of teacher tenure rights?

List of All Parties
[Rule 14(1.)(b)]

The caption contains the names of all parties.

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[Rule 14(1.)(c)]

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Illinois Supreme Court Rule 352(a)

Illinois Supreme Court Rule 375(a)

Illinois Supreme Court Rule 317

Wisconsin v. Constantineau, 400 U.S. 433, 91 S.Ct. 507, 27 L.Ed. 2d 515 (1971)

Veillon v. Exploration Services, Inc., 876 F.2d 1197 (Fifth Cir. 1989)

Barrett v. County of Cook, 388 Ill. 251, 57 N.E.2d 873 (1944)

Resolution Trust Corp. v. Dabney, 73 F.3d 262 (Tenth Cir. 1995)

Sakon v. Andreo, 119 F.3d 109 (Second Cir. 1997)

1488, Inc. v. Philsec Invest Corp., 939 F.2d 1281 (Fifth Cir. 1991)

In Re Murchison, 349 U.S. 133 at 136, 75 S.Ct. 623 at 625, 99 L.Ed. 942 (1955)

Neblett v. Carpenter, 305 U.S. 297, 83 L.Ed. 182, 59 S.Ct. 170, reh.den., 305 U.S. 675, 83 L.Ed. 437, 59 S.Ct. 355 (1938)

Watts v. Thompson, 111 F.3d 220 (Seventh Cir. 1997)

In re Korte, 193 Ill.App.3d 243, 549 N.E.2d 906, 140 Ill.Dec. 255 (Fourth District 1990)

Hultberg v. Anderson, 252 Ill.607, 97 N.E. 216 (1911)

Illinois Supreme Court Rule 63C

Citations of the Official and Unofficial Reports of the Opinions and Orders Entered in the Case [Rule 14(1.)(d)]

1) Substitute Opinion of the Illinois Appellate Court: 295 Ill.App.3d 272, 229 Ill.Dec. 706, 692 N.E.2d 695, 1977 Ill.App. LEXIS 829 (Second District 1997) [reproduced in Appendix at APP 20]

2) Order of the Illinois Supreme Court Denying Petition for Appeal as of Right: 178 Ill.2d 580, 1998 Ill. LEXIS 632 (1998) [reproduced in Appendix at APP 1]

Concise Statement of Basis
For Jurisdiction
[Rule 14(1.)(e)]

i) On June 3, 1998, the Illinois Supreme Court entered an Order (APP 1) denying Petitioner's Petition for Appeal as a Matter of Right based on federal constitutional grounds (or, in the alternative, for leave to appeal)

ii) Order re: Rehearing: Not Applicable

iii) Rule 12.5 Reliance: Not Applicable

iv) Jurisdiction is conferred on this Court by 28 U.S.C. §1257

v) Rule 29.4 Notifications: Not applicable

Citations to Constitution, Statutes and Illinois Supreme Court Rules [Rule 14(1.)(f)]

Note: Text of the following provisions is reproduced in the separately bound Appendix

A) Constitution of the United States, Fourteenth Amendment, Section 1

B) Illinois Statutes:

110 ILCS 805/3B-1 through 3B-6
(Public Community College Tenure Act)

C) Illinois Supreme Court Rules: Rules 63C; 317; 341; 344; 352; 375(a) and R.P.C. 8.3(b)

Concise Statement of the Case
[Rule 14(1.)(g)]

A] The Underlying Facts

Plaintiff-Appellant Mary G. Kerger was regularly employed as an instructor of Business Law courses by the Defendant College of DuPage since the fall of 1993 (C.347, ¶1)[1]. Kerger taught for Defendant on a full time basis during the regular academic years 1993/1994, 1994/1995, and 1995/1996 (C.355, ¶12; C.356, ¶13, ¶14).

On or about January 17, 1996, Defendant transmitted to Kerger a "Notice of Dismissal" (C.348, ¶6) the body of which, in its entirety, read as follows:

> Dear Mary Kerger:
>
> We regret to advise you that the Board of Trustees of Community College District No. 502, Counties of DuPage, Cook, and Will, State of Illinois, pursuant to Article IIIB of the Public

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[1]references denoted "C." are to the common law record on appeal possession of which is with the Clerk of the Circuit Court; references denoted "APP" are to the separately bound Appendix supplied with this Petition.

> Community College Act, has determined that you are to be dismissed on the last day of classes, June 11, 199[6]. Your services to the Community College District will be terminated as of the last day of classes, June 11, 199[6].(C.422)

The Notice of Dismissal was accompanied by a letter from Defendant's President stating that the giving of the notice was "a legal requirement foisted upon the board by the legislature" under "a tenure act passed by the Illinois legislature several years ago" (C.122).

On January 29, 1996, Kerger, through her counsel, requested the reasons for the decision of Defendant College to Dismiss (C.123); C.453). On February 2, 1996, Defendant issued the following response to such query:

The specific reasons for the dismissal of Mary Kerger are:

1. Mary Kerger was hired as a temporary replacement for full-time faculty members who were on leave or died.

2 The College reevaluated its ratio of students to faculty members, or full-time v. part-time positions, and addressed the

> relative strength and/or need for programs including, but not limited to, Business Law resulting in the elimination of a full-time position. (C.124; C.454)

The Defendant College also stated that it could simply "choose" to deny Plaintiff tenure for any or no reason (R.C129; C130; C492; C493).

Kerger thereby maintained that Defendant did not issue the Notice of Dismissal as a result of her performance or qualifications as a teacher or as a result of any evaluation of her performance or qualifications (C.348; C.450).

Kerger further maintained that the Defendant had not decided to decrease under Section 3B-5 of the Tenure Act (110 ILCS 805/3B-1, et.seq.), as of the beginning of 1996/1997 academic year, the number of Faculty Members (within the meaning of 110 ILCS 805/3B-1) employed by it from the level existing either at January 17, 1996, or at the close of the 1995/1996 academic year (Amended Complaint, ¶13 at C.264)

Kerger also maintained that the Defendant had not decided to decrease, under Section 3B-5 of the Tenure Act, the number of Faculty Members on account of any "discontinuance of a particular type of teaching

service or program" (Amended Complaint, ¶14 at C.265).

The record contained no indication that Kerger ever received a "statement of honorable dismissal" described in 110 ILCS 805/3B-5; Kerger instead charged that she had not received any proper notice of dismissal under any provision of Article IIIB of 110 ILCS 805 (Amended Complaint, Count III ¶10 at C.269), specifically claiming not to have received the "statement of honorable dismissal" described in 110 ILCS 805/3B-5 (Stipulation, Exhibit B, p.35, lines 1-7).

B] The Essential Litigation History

1] In the Circuit Court--

Kerger filed her Amended Complaint (C.347) pursuant to leave of court on September 3, 1996, (C.347-C.422) seeking declaratory relief concerning her substantive rights under 110 ILCS 805/3B-3 to reemployment and to tenure.

The Amended Complaint (C.347) set forth, as the basis of Plaintiff's claims, §3B-3 contained within the Tenure Article of the Public Community College Act (110 ILCS 805/Article 3B) which reads with emphasis added as follows:

> Sec.3B-3. *Dismissal of Non-tenure Faculty Member*. Every Board shall provide by rule or contract for a procedure to evaluate the performance and qualifications of non-tenure faculty members. If the implementation of such procedure results in a decision to dismiss a non-tenure faculty member for the ensuing school year or term, the Board shall give notice thereof to the faculty member not later than 60 days before the end of the school year or term. The specific reasons for the dismissal shall be confidential but shall be issued to the teacher upon request. If the Board fails to give such notice, within the time period, the faculty member shall be deemed reemployed for the ensuing school year. If the board fails to give such notice within the time provided during the third year, or during the fourth year in the case of a one year extension, the faculty member shall enter upon tenure during the ensuing school year or term. (emph. added)

Counts I and III sought declaratory relief as to her statutory right to reemployment under the penultimate sentence of 110 ILCS 805/3B-3, with Count I alleging invalid grounds for dismissal and Count III alleging improper notice. Counts II and IV sought declaratory relief as to her statutory right to

tenure under the last sentence of 110 ILCS 505/3B-3, with Count II alleging invalid grounds for dismissal and Count IV alleging improper notice. Plaintiff's Amended Complaint specifically alleges that she was not dismissed as a non-tenured faculty member on account of any deficiencies in performance or qualifications (Counts I and II, ¶7) and that no notice of dismissal under either 110 ILCS 805/3B-3 or 110 ILCS 805/3B-5 of the Public Community College Act was issued to her (Counts III and IV, ¶10).

On September 17, 1996, Defendant filed a motion to dismiss (C.425) the Amended Complaint specifically alleging that Defendant had complied with §3B-3 (C.429) including specifically the giving of a §3B-3 Notice of Dismissal and also claiming that the Defendant Board had, notwithstanding enactment of Sections 3B-2, 3B-3 and 3B-5 of the Tenure Act, retained "unlimited authority" (C.431) to terminate the employment of a non-tenured faculty member. After briefing and oral argument (Illinois Supreme Court Rule 323 Stipulation[2], Exh. B) by the parties (C.426ff; C.439ff), the Circuit Court, on September 26, 1996, granted the motion to dismiss the amended complaint

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[2]Rule 323 permits the parties to stipulate to the use on appeal of reports of proceedings (i.e., court reporter transcripts) without trial judge certification.

(C.438).

The trial court agreed with Plaintiff's position that no §3B-3 notice of dismissal had been given to Plaintiff by Defendant because the Defendant's use of the performance and qualifications evaluation procedure had not "resulted" in either a decision to dismiss or issuance of a dismissal notice based thereon (Illinois Supreme Court Rule 323 Stipulation, Exhibit B, pages 18, 19 at lines 12-19; 29 at lines 22, 23). However, the trial court ruled that the Defendant College retained unlimited discretion to terminate non-tenured Faculty Members "in areas not covered by the statute." (Illinois Supreme Court Rule 323 Stipulation Exh.B, pp. 42-44). The trial court did not address the immediately preceding statutory section, §3B-2 which provided in relevant part as follows:

> Any faculty member who has been employed in any district for a period of 3 consecutive years shall enter upon tenure unless dismissed as hereinafter provided. (emphasis added)

2] In the Illinois Appellate Court, Second District--

The Appellate Court first set the case for oral argument but then dispensed with it, expressly referring to Illinois Supreme Court Rule 352(a) (APP 3). The Court granted a Motion to add Supplemental Authority.

On October 17, 1997, the Court issued its initial Opinion (APP 4) which agreed with Defendant that it had complied with Section 3B-3 of the Act and that it had unlimited common law power to dismiss a non-tenured Faculty Member for any or no reason. The Opinion struck whole portions of Plaintiff's brief including the key statutory text of §3B-2 of the Tenure Act and, in affirming the Circuit Court, stated that Plaintiff's arguments were "enigmatic" (APP 8). The Opinion also lashed out at Plaintiff's counsel, an experienced appellate advocate (APP 70), for using three footnotes (APP 68) containing argument in a brief of some 60 pages.

On November 7, 1997, Plaintiff Kerger filed separately her first Petition for Rehearing and "R.P.C. 8.3(b) Report of Violation of Code of Judicial Conduct Raising Question of Fitness for Office and Illinois Supreme Court Rule 361 and 63C Motion to Disqualify" (APP 64). The Petition for Rehearing pointed out the Appellate Court's refusal to address three items: 1) the text of Section 3B-3 of the Tenure Act; 2) the text of Section 3B-2 of the Tenure Act; and 3) the text of Supreme Court Rule 375(a). The aforementioned Report of Violation not only sought to disqualify Appellate Justice Susan Hutchinson from further participation in the proceeding on account of demonstrated bias on the face of the Opinion she had authored, but also reported the alleged judicial miscon-

duct to the Judicial Inquiry Board as required by Illinois Rule of Professional Conduct 8.3(b).

On December 4, 1997, the Illinois Appellate Court, with Justice Hutchinson still participating, entered, without explanation or comment, orders (APP 18) denying both the Petition for Rehearing and the Motion to Disqualify Justice Hutchinson from further participation and substituting an Opinion (APP 20) dated December 4, 1997, for the one which had been filed on October 17. At page 7 of the second Opinion, the Appellate Court did a complete about face on one of the three points raised in the Petition for Rehearing pertaining to a key issue in the case, namely Defendant's non-compliance with the text of Section 3B-3 of the Tenure Act. To wit, the Appellate Court now embraced Plaintiff's argument concerning Defendant's non-compliance with Section 3B-3 (which argument the Appellate Court had previously derogatorily labeled in its first Opinion as "enigmatic") and now instead labeled Defendant's position, which the first Opinion had previously accepted, as "absurd." Nonetheless, the Appellate Court refused to consider or address the other two points, namely the text of Section 3B-2 of the Tenure Act and the text of Rule 375(a) and so refused to reverse the Circuit Court's dismissal or remove the

imposition of sanctions.

Therefore, on December 18, 1997, Plaintiff Kerger filed a Second Petition for Rehearing, this one directed against the December 4 Opinion. This Petition was subsequently denied (APP 33).

3] In the Illinois Supreme Court

On February 25, 1998, Petitioner filed her Illinois Supreme Court Rule 317 Petition for Appeal As A Matter of Right (or, in the alternative, for Leave to Appeal) with the Illinois Supreme Court. Such filing was timely under the Illinois Supreme Court's Order of January 9, 1998 (A-13). Illinois Supreme Court Rule 317 provides that appeals from the Illinois Appellate Court shall lie to the Illinois Supreme Court as a matter of right in cases in which a question under the Constitution of the United States arises for the first time in and as a result of action of the Illinois Appellate Court. The Rule 317 Petition specifically charged that the Illinois Appellate Court violated the federal (and Illinois) constitutional requirement of due process of law specifically applicable to the adjudicatory process by:

- imposing sanctions, which included striking from Petitioner's Brief the text of the controlling Illinois statute, without notice and

opportunity to be heard and which imposition also violated the controlling court rule namely Illinois Supreme Court Rule 375(a) expressly containing such requirements.

- allowing an appellate judge to continue to participate in the adjudication after demonstrating palpable bias and partiality against petitioner and her counsel in the following ways:

  a] striking key statutory texts (APP 9) used in the Statutes Involved section of Plaintiff-Appellant's Brief-in-chief reproduced without reduction in size directly from Michie's *Illinois Compiled Statutes Annotated*;

  b] striking (APP 9) other portions of the brief-in-chief of Plaintiff-Appellant as a sanction for that brief's use of a total of three argumentative footnotes (APP 68) in a brief 61 pages long while not sanctioning Defendant-Appellee for using five argumentative footnotes in its much shorter brief (APP 68), one footnote of which was improperly used in the Statement of Facts;

c] criticizing and sanctioning Plaintiff's attorney for using a variety of type sizes, fonts and formats (APP 8) without criticizing Appellee's counsel who likewise used a variety of type size, fonts, and formats, including minuscule sized footnotes;

d] criticizing Plaintiff's attorney for making "enigmatic arguments" (APP 8) without setting forth any reasoning or basis for the charge;

e] falsely accusing Plaintiff's attorney of presenting statutory texts in "greatly reduced, dual-column format" (APP 8) when there was not one instance of such practice;

f] accusing Plaintiff's attorney of "annoying" the Court (APP 8) by use of three argumentative footnotes in a brief over 60 pages long when Defendant's counsel used, without annoying the court, five argumentative footnotes in the Defendant's brief (APP 68).

g] publicly and falsely accusing Plaintiff's counsel of violating the Illinois Supreme Court Rule 341(a) 75 page limit on briefs (APP 8) when the brief was only 61 pages in length (APP 71) and, after being challenged (APP 71), wilfully persisted in such false accusation in the substituted Opinion (APP 24) with no analysis or basis in fact whatsoever.

On June 3, 1998, the Illinois Supreme Court denied the Rule 317 Petition for Appeal As a Matter of Right without comment, thereby refusing to entertain the appeal (APP 1).

Direct and Concise Argument Amplifying Reasons
Relied on For Allowance of the Writ
[Rule 14(1.)(h)]

Summary Statement

The denial by the Illinois Supreme Court of Petitioner's Illinois Supreme Court Rule 317 Petition for Leave to Appeal As a Matter of Right decided an important federal question in a way that conflicts with relevant decisions both of this Court (Rule 10(c)) and of the United States Courts of Appeal (Rule 10(b)). This Court and lower federal courts have long held that the Fourteenth Amendment's guaranty of due process of law within the adjudicatory process itself is denied a litigant where the state judicial officer(s) manifest actual bias or even the appearance of bias and where notice and opportunity to be heard are not afforded prior to the imposition of judicial sanctions.

In the instant case, the Illinois Supreme Court, by its threshold denial of Petitioner's Petition for Appeal as of Right based on constitutional grounds, determined, contrary to federal judicial precedents, that the presence of bias within, and the imposition of sanctions without notice and an opportunity to be heard by, the Illinois Appellate Court did not constitute denials of due process of law. Such denial was not a discretionary act by the Illinois Supreme Court because Illinois Supreme Court Rule 317 confers an absolute right of appeal where a

constitutional violation by the Illinois Appellate Court is committed by that court. In denying the Rule 317 Petition, the Illinois Supreme Court necessarily found no constitutional violation had been committed by the Illinois Appellate Court despite the existence of bias and the unconstitutional imposition of sanctions. Petitioner has thus been denied by the judiciary of her own State of Illinois the fair adjudicative procedure guaranteed by the 14th Amendment to the U.S. Constitution.

A] Imposition of Sanctions by the Appellate Court Violated of Due Process of Law

The most basic, fundamental and essential elements of procedural due process are fair notice and an opportunity to be heard (Wisconsin v. Constantineau, 400 U.S. 433, 91 S.Ct. 507, 27 L.Ed. 2d 515 (1971); Veillon v. Exploration Services, Inc., 876 F.2d 1197 (Fifth Cir. 1989); Barrett v. County of Cook, 388 Ill 251, 57 N.E.2d 873 (1944)). These constitutional requirements are embodied in Illinois Supreme Court Rule 375(a) in the context of governing imposition of sanctions by an Appellate Court panel for alleged violations of civil appeal rules. In the instant case, the Appellate Court imposed sanctions without notice and without opportunity to cure or otherwise respond, a clear violation of Rule 375 and the due process requirements which it incorporates. Specifically, the Appellate Court, without motion of the adverse party and without warning to Petitioner or her appellate

counsel, struck and failed to mention key statutory texts, which texts (particularly, 110 ILCS 5/3B-2, first sentence) were key authorities for Kerger's arguments. Where sanctions are imposed without notice and opportunity to respond, due process protections are violated (Resolution Trust Corp. v. Dabney, 73 F.3d 262 (Tenth Cir. 1995); Sakon v. Andreo, 119 F.3d 109 (Second Cir. 1997); 1488, Inc. v. Philsec Invest Corp., 939 F.2d 1281 (Fifth Cir. 1991)).

B] The Appellate Court Panel Demonstrated Bias Against Kerger Thereby Depriving Her of Her Constitutional Rights to a Fair Hearing

It has long been held that the constitutional right to due process of law is denied where a court is either biased or even merely presents the appearance of bias against the party or his attorney. (In Re Murchison, 349 U.S. 133 at 136, 75 S.Ct. 623 at 625, 99 L.Ed. 942 (1955)). The initial Opinion of the Appellate Court (APP 4) demonstrated actual and/or apparent bias against Plaintiff or her counsel by taking the actions set forth in detail herein.

The only explanation for the demonstrated bias is one rooted in a political philosophy of hostility towards tenure

legislation of the Illinois General Assembly and prejudice against anyone claiming the protections of such statutes.

C] The Appellate Court Refused to Acknowledge and/or Address Arguments and Authorities on the Merits, Thereby Denying Due Process

It has also long been held that mere judicial error in construing, interpreting and/or applying statutory authorities gives rise to no due process violation (Neblett v. Carpenter, 305 U.S. 297, 83 L.Ed. 182, 59 S.Ct. 170, reh.den., 305 U.S. 675, 83 L.Ed. 437, 59 S.Ct. 355 (1938)). In addition, where a reviewing court determines that an advocate's argument is wholly lacking in merit, discussion and analysis is not required (Watts v. Thompson, 111 F.3d 220 (Seventh Cir. 1997)). However, due process of law is denied when a Court, having been properly presented with the plain text of a statutory authority, deliberately refuses to consider and address it at all (In re Korte, 193 Ill.App.3d 243, 549 N.E.2d 906, 140 Ill.Dec. 255 (Fourth District 1990)). Similarly, due process of law is denied when judgment is pronounced by a Court without any judicial determination of the facts which alone can support such judgment. In such case, the court's

judgment is merely the arbitrary edict of the judge and violates due process requirements (Hultberg v. Anderson, 252 Ill. 607, 97 N.E. 216 (1911)). Here, the Illinois Appellate Court committed and knowingly persisted in committing not just one but rather three distinct violations:

i] **Deliberate Refusal to Address Supreme Court Rule 375(a)**

Upon receipt of the initial Opinion (APP 4), Plaintiff-Appellant in her first Petition for Rehearing and her companion R.P.C. 8.3(b) Report of Violation of Code of Judicial Conduct (APP 64) pointed out the three-fold requirements of Rule 375(a) for the imposition of sanctions on account of alleged violations of civil appeal rules:

- prior notice
- opportunity to cure or otherwise respond
- a finding of wilfulness

The Appellate Court denied the Petition for Rehearing without explanation (APP 18), withdrew its initial Opinion (APP

18) and issued a substitute Opinion (APP 20) which broadened the sanction, without ever providing an opportunity to cure and without ever making a wilful finding. In fact, the Appellate Court repeatedly refused to address the text of Rule 375(a), after being challenged in the petitions for rehearing (see APP 79). Such arbitrary and capricious use of judicial power which deliberately refused to address Rule 375(a)'s three-fold requirements violated the constitutional standards expressed in Korte and Hultberg.

ii] **Deliberate Refusal to Address Illinois S.Ct. Rule 63C**

Upon receipt of the initial Opinion, Plaintiff-Appellant moved to disqualify Justice Hutchinson as author of the initial Opinion from further participation in the case on the basis of actual or apparent bias (APP 64). Without explanation or comment, including a complete failure to address Illinois Supreme Court Rule 63C, the Court, with Justice Hutchinson participating, denied the motion. The

Appellate Court instead tried to mask its actual or apparent bias manifested against Plaintiff and/or her counsel in the initial Opinion by editing out the most antagonistic and deprecatory comments (compare initial Opinion (APP 4) to substitute Opinion (APP 20)).

iii] **Deliberate Refusal to Consider Controlling Statute (110 ILCS 5/3B-2, first sentence)**

Plaintiff/Appellant Kerger argued throughout the litigation that two sections of the Tenure Act (110 ILCS 5/3B-3 and 3B-5) provided the exclusive grounds and means for dismissing full-time non-tenured Public Community College faculty members regularly engaged in teaching. The Defendant College argued and the trial court held that the Tenure Act did not take away the common law bases for dismissal (i.e., that unlimited common law grounds for dismissal somehow co-existed with Tenure Act restrictions on dismissal). Plaintiff/Appellant submitted as one of her specific authorities for her

argument the first sentence of 110 ILCS 5/3B-2 which reads:

> Any faculty member who has been employed in any district for a period of 3 consecutive years shall enter tenure unless dismissed as hereinafter provided. (emphasis added)

The last clause evidences the Illinois General Assembly's clear intent to supplant common law bases for dismissal. Both Opinions of the Illinois Appellate Court (APP 4; APP 20) struck, as a sanction, the text of this statute from Appellant's Brief and refused to analyze or even mention this statute or its text. The Illinois Appellate Court's Opinions instead state without analysis of the statutory text that it was unclear "whether the legislature intended to supplement or replace the common law with this enactment." (APP 12; APP 28) It was absolutely preposterous for the Illinois Appellate Court to improperly strike and refuse to address the key authoritative statutory text which demonstrated the patent error of the Defendant College and of the Circuit

and Appellate Courts in their expressed view that unlimited common law power to dismiss excellently performing faculty members survived enactment of, and co-exists in some unexplained way with, the Tenure Act protections of Section 3B-3 thereof.

In Part I of Plaintiff/Appellant's initial Petition for Rehearing, the Appellate Court's failure to consider this very text, namely, the first sentence of 110 ILCS 5/3B-2, was specifically pointed out. The Petition was denied without comment, thereby further manifesting the Illinois Appellate Court's wilful choice to rule by fiat through express refusal to consider or address relevant statutory texts brought to its attention and in contravention of the requirements of due process as articulated by Korte and Hultberg.

Prayer

Wherefore, Petitioner Mary G. Kerger prays that his Honorable Court grant this petition for writ of certiorari and set the case for briefing and oral argument.

Respectfully submitted,

By: Mary G. Kerger
Mary G. Kerger

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Supreme Court, U.S.
FILED

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October Term, 1998

MARY G. KERGER,
Petitioner,

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BOARD OF TRUSTEES OF COMMUNITY COLLEGE DISTRICT NO. 502, County of DuPage and State of Illinois, a/k/a COLLEGE OF DUPAGE
Respondent.

On Petition For A Writ of Certiorari To The Illinois Supreme Court

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APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

Mary G. Kerger, pro se
1908 Cromwell Drive
Wheaton, Illinois 60187
(630) 690-5050

APP 1

STATE OF ILLINOIS
SUPREME COURT

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eleventh day of May, 1998.

Present: Charles E. Freeman, Chief Justice
Justice Benjamin K. Miller Justice Michael A. Bilandic
Justice James D. Heiple Justice Moses W. Harrison II
Justice Mary Ann C. McMorrow Justice John L. Nickels

On the third day of June, 1998, the Supreme Court entered the following judgment:

No. 84687

Mary G. Kerger,

Petitioner

v.

Board of Trustees of Community College District NO. 502, County of DuPage, and State of Illinois, a/k/a College of DuPage,

Respondents

Petition for Leave to Appeal from Appellate Court Second District 2-96-1374 96CH0280

The Court having considered the Petition to appeal as a matter of right or Petition for leave to appeal and being fully advised of the premises, the petition to appeal as a matter of right or petition for leave to appeal is DENIED.

As clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, I certify that the foregoing is a true copy of the final order entered in this case.

IN WITNESS
WHEREOF, I have
hereunto subscribed my
name and affixed the
Seal of said Court, this
twenty-fifth Day of
June, 1998.

/s/Juleann Hornyak Clerk,
Supreme Court of the State of Illinois

APP 3

STATE OF ILLINOIS APPELLATE COURT
SECOND DISTRICT

Appeal from the Circuit Court of County of DuPage

Trial Court No.: 96CH0280, 96CH280

THE COURT HAS THIS DAY, 08/05/97, ENTERED THE FOLLOWING ORDER IN THE CASE OF:

Gen. No.: 2-96-1374

Kerger, Mary G. v. Bd. of Trustees of Community College

On the court's own motion, pursuant to Supreme Court Rule 352(a), oral argument is dispensed with, and said case is removed from the 8/19/97, oral docket. The case will be decided on the briefs only and a disposition will be filed in due course.

LOREN J. STROTZ
Clerk

cc: Richter, Jaros & Robinson
Arthur G. Jaros, Jr.
Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd.
Everett E. Nicholas, Jr.
Frank B. Garrett, III

NOTICE

The text of this opinion may be changed or corrected prior to the time for filing of Petition for Rehearing or the disposition of the same.

FILED
OCT 17 1997
LOREN J. STROTZ,
CLERK,
APPELLATE COURT
2nd DISTRICT

No. 2--96-1374

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

MARY G. KERGER,	)	Appeal from the Circuit
	)	Court of DuPage County.
Plaintiff-Appellant,	)	
	)	
	)	No. 96--CH--0280
v.	)	
BOARD OF TRUSTEES OF		)
COMMUNITY COLLEGE	)	
DISTRICT NO. 502, County	)	
of DuPage, and State of	)	
Illinois, a/k/a College of	)	
Du Page,	)	Honorable
	)	Bonnie M. Wheaton,
Defendant - Appellee.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the opinion of the court:

APP 5

Plaintiff, Mary G. Kerger, appeals from an order dismissing her action against defendant, Board of Trustees of Community College District No. 502, County of Du Page, and State of Illinois, a/k/a College of DuPage. Plaintiff argues that the trial court erred in dismissing her amended complaint pursuant to section 2--615 of the Code of Civil Procedure (Code) (735 ILCS 5/2--615 (West 1994)) and in denying her motion for summary judgment. We affirm.

Plaintiff began teaching courses on business law at defendant's campus in fall of 1993. She continued to work full time as a "replacement" teacher during the next six semesters. On January 17, 1996, approximately 2 ½ years into her employment, plaintiff received a notice of dismissal from defendant. The notice stated that the effective date of dismissal was June 11, 1996, pursuant to article III of the Public Community College Act (the Act) (13.0 ILCS 805/3--1 -et seq. (West 1994)) .

Plaintiff quickly pursued her remedies under the grievance procedure outlined in the collective bargaining agreement between defendant and the faculty association. Plaintiff requested the reasons for her dismissal, and defendant informed her that she was only hired as a temporary employee and that it had reevaluated the ratio of students to faculty and eliminated a full-time position. Plaintiff filed her grievance. Her first meeting pursuant to the grievance procedure was held on February 12, 1996. Plaintiff chose to bring with her an "advisor/observer, " in this case a court reporter who would create a stenographic record of the

meeting.

Defendant rejected this stage of the grievance by a written response dated February 23, 1996. Defendant stated that the reasons for plaintiff's dismissal were succinctly stated in the notice of dismissal and that defendant was acting under its inherent management authority. Defendant admitted that plaintiff was not dismissed for reasons of "financial exigency," but was dismissed pursuant to the broad discretion inherently given to defendant.

Plaintiff filed her appeal under the grievance procedure on March 4, 1996. The parties then met for a second meeting. Defendant informed plaintiff that they would not conduct the meeting in the presence of the court reporter that plaintiff had brought as her advisor/observer. Plaintiff declared the meeting suspended until the board made a ruling on her right to have a court reporter as her advisor/observer.

Plaintiff filed a complaint in the trial court on March 27, 1996. Plaintiff sought the equitable relief of a permanent mandatory injunction to allow the grievance hearing to be held in the presence of the court reporter. Defendant moved to dismiss the complaint pursuant to section 2-615 of the Code. On July 22, 1996, the trial court granted defendant's motion to dismiss and denied plaintiff's motion to amend the complaint. The trial court later vacated this order and granted plaintiff leave to amend her complaint.

Plaintiff filed her amended complaint on September 3,

1996. This complaint did not seek injunctive relief on the issue of the Court reporter, but instead sought declaratory relief on plaintiff's right to continued employment and tenure.

Plaintiff first alleged that defendant did not have a sufficient statutory basis for her dismissal. She noted that defendant did not dismiss her based on performance or financial exigency. Plaintiff also alleged that defendant was not decreasing the number of faculty members nor discontinuing any, teaching services or programs. Plaintiff interprets section 3B--3 of the Act (110 ILCS 805/3B--3 (West 1994)) to provide that nontenured teachers who are not properly dismissed under either sections 3B--3 or 3B--5 will be considered reemployed for the following school year. Plaintiff finally asserts that her reemployment would thus afford her tenure status under section 3B--3.

Defendant filed a motion to dismiss the amended complaint pursuant to section 2--615 of the Code (735 ILCS 5/2-615 (West 1994)). A hearing was held on this motion on September 26, 1996. The trial court examined the statute and acknowledged that defendant had not complied with every aspect of sections 3B--3 and 3B--5 of the Act. However, the trial court held that defendant acted within its common-law authority and granted its motion to dismiss the amended complaint. Plaintiff subsequently filed a motion for rehearing and a motion for summary judgment. The trial court denied both motions.

The central issue on appeal is rather simple, although not identified succinctly by either party: whether the trial

court erred in granting defendant's section 2-615 motion to dismiss the complaint. To determine the resolution of this issue, we must first evaluate the trial court's application and interpretation of the Act. Plaintiff also asserts that the trial court erred in denying her motion for summary judgment pursuant to section 2-1005 of the Code (735 ILCS 5/2-1005 (West 1994)).

Before addressing the issues in this case, we note plaintiff's use of photocopied reproductions of statutory sections and pages from the record of proceedings within the text of the brief in chief. Creativity among advocates is vital to the evolution of the law. However, this creativity should be limited to the narrow confines of legal arguments and not spill carelessly over into the realm of appellate brief writing. Plaintiff's counsel has managed to detract from his enigmatic arguments by presenting this court with a dizzying array of type sizes, fonts, and formats. A magnifying glass should have been provided with each brief to aid the court in its reading of statutes presented in a greatly reduced, dual-column format.

Additionally, the brief in chief contained numerous footnotes that consisted of substantive arguments more properly reserved for the text of the brief. Beyond merely annoying the court, plaintiff's counsel also managed to violate various sections of Supreme Court Rule 341 (155 Ill. 2d R. 341). Adherence to the page limitations and guidelines for footnote usage is not an inconsequential matter. See Lagen v. Balcor Co., 274 Ill. App. 3d 11, 14-15 (1995). Nor are these limitations and guidelines arbitrary exercises of the supreme court's supervisory powers. 47th & State Currency Exchange,

Inc. v. B. Coleman Corp., 56 Ill. App. 3d 229, 232 (1977). On the contrary, Rule 341 represents the Illinois Supreme Court's considered opinion of the format that best facilitates the clear and orderly presentation of arguments. Parties ignore Rule 341 at their peril. On our own motion, therefore, we strike from plaintiff's brief all footnotes and reduced statutory quotations.

A section 2--615 motion admits all well-pleaded facts as true but not conclusions of law or factual conclusions that are unsupported by allegations of specific facts. Talbert v. Home Savings Of America, F.A., 265 Ill. App. 3d 376, 379 (1994). If, after disregarding any legal and factual conclusions, the complaint fails to allege sufficient facts to state a cause of action, the motion to dismiss should be granted. Groenings v. City of St. Charles, 215 Ill. App. 3d 295, 299-300 (1991). In ruling on a motion to dismiss for the failure to state a cause of action, the complaint's factual allegations are to be interpreted in the light most favorable to the plaintiff, but factual deficiencies may not be cured by liberal construction. Groenings, 215 Ill. App. 3d at 300. "This process does not require the court to weigh findings of fact or determine credibility. As such, the reviewing court is not required to defer to the trial court's judgment and will review the matter de novo." T&S Signs, Inc. v. Village of Wadsworth, 261 Ill. App. 3d 1080, 1084 (1994).

Applying a de novo standard, we review plaintiff's complaint. Plaintiff's complaint first alleges that defendant failed to comply with section 3B--3 of the Act, which states:

"Every Board shall provide by rule or contract for a procedure to evaluate the performance and qualifications of non-tenure faculty members. If the implementation of such procedure results in a decision to dismiss a non-tenure faculty member for the ensuing school year or term, the Board shall give notice thereof to the faculty member not later than 60 days before the end of the school year or term. The specific reasons for the dismissal shall be confidential but shall be issued to the teacher upon request. If the Board fails to give such notice, within the time period, the faculty member shall be deemed reemployed for the ensuing school year. If the Board fails to give such notice within the time provided during the third year, or during the fourth year in the case of a one year extension, the faculty member shall enter upon tenure during the ensuing school year or term. " 110 ILCS 805/3B--3 (West 1994). This section requires a public community college to create an evaluation procedure and places restrictions upon the dismissal of nontenured faculty pursuant to these procedures.

Defendant asserts that it complied with the statute. Specifically, defendant argues that it created an evaluation procedure, evaluated plaintiff according to the procedure, and gave plaintiff timely notice. Defendant asserts that it is in compliance with this section even if it dismisses faculty members who have excellent evaluations. Defendant explains this assertion by arguing that, once an evaluation system is in place and implemented, nothing within this section prevents a public community college from exercising vast common-law discretion in the dismissal of nontenured teachers.

The preeminent goal of a court construing a statute is to give effect to the legislature's intent. Jahn v. Troy Fire Protection District, 163 Ill. 2d 275, 282 (1994). Statutory language is the best indicator of this intent, and where such language reveals the legislative drafters' intent, we may not resort to other aids for construction. People v. Brooks, 158 Ill. 2d 260, 264 (1994). "It is axiomatic that in interpreting a statute the language used by the legislature must be given its plain and ordinary meaning." People V. Brandon, 162 Ill. 2d 450, 460-61 (1994).

We determine that defendant's interpretation of the statute does represent the "plain and ordinary meaning" of the statute. Dismissing nontenured faculty members who receive excellent evaluations may seem harsh, but we can find nothing within this section that requires or even suggests that a public community college must establish just cause for dismissal once the procedural mandates are met. Courts should avoid construing a statute in a manner that reduces any element of the legislation to mere surplusage. See, e.g., Bonaguro v. County Officers Electoral Board, 158 Ill. 2d 391, 397 (1994) (if possible, when determining the legislature's intent, statutes should be construed so each portion has meaning. Therefore, we determine that defendant did comply with the notice requirement of section 3B--3 of the Act.

Plaintiff also argues that defendant did not comply with section 3B--5 of the Act (110 ILCS 805/3B--5 (West 1994)). It does not appear that defendant really disputes this point, nor could it. This section would require defendant to

provide plaintiff with a statement of honorary dismissal as part of the notice of dismissal. No such statement was provided to plaintiff. Therefore, we determine that defendant did not comply with the notice requirements of section 3B--5 of the Act.

However, our resolution of these arguments does not resolve this appeal. Defendant's adherence or nonadherence to these sections of the Act is only relevant if these sections are the exclusive vehicles for the dismissal of nontenured faculty members of a public community college. The trial found these sections of the Act inapplicable. At the same time, the trial court did find defendant's actions within the broad, common-law powers inherently given to a school board. In essence, the trial court found that these sections were not the exclusive remedies for dealing with the dismissal of nontenured teachers. Both parties have been consumed in their own arguments and have largely ignored the findings of the trial court.

It is unclear from the face of the statute whether the legislature intended to supplement or replace the common law with this enactment. We will look to the common law and then to the legislative history of the Act to determine its legislative intent. Under the common law, "[t]he employment of personnel is one of the nondelegable functions of school boards." Board of Trustees, Prairie. State College v. Illinois Educational Labor Relations Board , 173 Ill. App. 3d 3.95, 413 "A school board has maximum flexibility regarding non-tenured employees." Board of Trustees of Community College District No. 508 v. Federation of College Clerical &

Technical Personnel Local 1708, 153 Ill. App. 3d 37, 44 (1987). In general, Illinois statutes regarding teacher tenure are "in derogation of common law and must be strictly construed in favor of the school district." Stamper v. Board of Education of Elementary School District No. 143, 141 Ill. App. 3d 884, 888 (1986). Finally, it has been clearly established that the "legislature has given a community college board of trustees discretionary powers to rehire or terminate a nontenured teacher." Board of Trustees of Community College District No. 508 v. Cook County College Teachers Union Local 1600, 167 Ill. App. 3d 998, 1000 (1987).

A review of the legislative history of the Act reveals intent to supersede the common law in this area. See 81st Ill. Gen. Assem., Senate Proceedings, May 24, 1979, at 227-30. The legislators were concerned because many community colleges had not established tenure programs. This area of the Act was designed to create a uniform system of tenure for community colleges in Illinois. The statute was not designed to create new restrictive and exclusive protections for nontenured teachers. Tenure was deemed important because of the broad discretion the common law affords school boards in dismissing nontenured teachers. The legislature did not intend to eliminate this discretion; it merely sought to limit it in a few, narrow ways. Therefore, we find that No. 2--96--1374 both the common law and the Act are applicable to the dismissal of nontenured teachers from community colleges.

The amended complaint states that plaintiff disputes defendant's ability to dismiss her under its inherent

discretionary managerial authority. The trial court found that defendant had such authority as a matter of law. We agree. The language of the Act makes this point very clearly as follows:

"805/3--30. Powers of Board

§3--30. The board of any community college district has the powers enumerated in Sections 3--31 through 3--43. This enumeration of powers is not exclusive but the board may exercise all other powers, not inconsistent with this Act, that may be requisite or proper for the maintenance, operation and development of any college or colleges under the jurisdiction of the board." 110 ILCS 805/3--30 (West 1996). Accepting all of the factual allegations in plaintiff's complaint as true, we find that the complaint fails to state a claim upon which relief can be granted. Therefore, we affirm the trial court's dismissal of this complaint pursuant to section 2--615.

Having affirmed the trial court's dismissal of this action obviates the need to address whether the trial court erred in denying plaintiff's motion for summary judgment.

For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

Affirmed.

INGLIS and BOWMAN, JJ., concur.

United States of America

2-96-1374

MARY G. KERGER,
Plaintiff-Appellant,

State of Illinois,
Appellate Court, **ss.**
Second District,

v.

BOARD OF TRUSTEES OF COMMUNITY COLLEGE DISTRICT NO. 502, County of DuPage, and State of Illinois, a/k/a College of DuPage

Defendant-Appellee.

I, LOREN J. STROTZ, Clerk of the Appellate Court, in and for said Second Judicial District of the State of Illinois, and the keeper of the Records and Seal thereof, do hereby certify that the foregoing is a true, full and complete copy of the decision of the said Appellate Court in the above entitled cause of record in my said office.

IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of the said Appellate Court, in Elgin, in said State, this 17th day of October , A.D. 1997

/s/ Loren J. Strotz
Clerk Appellate Court, Second District

84687

IN THE ILLINOIS SUPREME COURT

MARY G. KERGER,	)Appeal from the Illinois
	) Appellate Court, Second
	) District, #2-96-1374
Plaintiff/Appellant.	)
	) Appeal from the Eighteenth
	) Judicial Circuit, DuPage
	) County, Illinois
	) Circuit Court Case No.
vs.	) 96 CH 0280
	)
BOARD OF TRUSTEES OF	)
COMMUNITY COLLEGE	) Motion is Directed To:
DISTRICT NO. 502, County	) Justice John L. Nickels
of DuPage and State of	) (S. Ct. Not in Session)
Illinois, a/ka COLLEGE OF	) Rule 361 (c) (1)
DUPAGE	)
	)
Defendant/Appellee.	)

ORDER

Illinois Supreme Court Rule 315 (b) to Extend or Confirm Time to File Rule 317 and Rule 315 Petition having come before the Court, it is hereby ordered as follows:

__x__ The motion is granted; the Rule 315(b) periods shall be deemed to commence running upon the denial of the Petition for Rehearing presently pending in the Illinois Appellate Court, Second District, or if such Petition is granted, upon final order of the Illinois Appellate Court entered after rehearing.

FILED
JAN - 9 1998

SUPREME COURT CLERK

APP 18

STATE OF ILLINOIS APPELLATE COURT
SECOND DISTRICT

OFFICE OF THE CLERK
APPELLATE COURT BUILDING
847-695-3750
ELGIN, ILLINOIS
60120-5558

Appeal from the Circuit Court of County of DuPage

Trial Court No. : 96CHO280, 96CH280

THE COURT HAS THIS DAY, 12/04/97, ENTERED THE FOLLOWING ORDER IN THE CASE OF

Gen. No.: 2-96-1374

Kerger, Mary- G. v. Bd. of Trustees Of Community College

Upon consideration of the plaintiff -appellant's Petition for Rehearing, the Petition for Rehearing is hereby denied.

On the court's own motion, the Opinion filed on October 17, 1997, is hereby withdrawn, and the enclosed Opinion filed in its stead.

Appellant's motion for disqualification of judge is denied.
(Hutchinson, Inglis, Bowman, JJ.)

LOREN J. STROTZ Clerk

cc: Richter, Jaros & Robinson
Arthur G. Jaros, Jr.
Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd.
Everett E. Nicholas, Jr.
Frank B. Garrett, III

NOTICE
The text of this opinion may be changed or corrected prior to the time for filing of Petition for Rehearing or the disposition of the same.

FILED
DEC 04 1997
LOREN J. STROTZ,
CLERK
APPELLATE COURT
2nd DISTRICT

NO. 2--96--1374

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

MARY G. KERGER,	)Appeal from the Circuit
	)Court of DuPage County.
Plaintiff-Appellant,	)
v.	) No. 96 - CH --280
	)
BOARD OF TRUSTEES OF COMMUNITY COLLEGE DISTRICT NO. 502, County of Du Page, and State of Illinois, a/k/a College of DuPage,	)
Defendant-Appellee.	)Hon. Bonnie M. Wheaton,
	) Judge, Presiding.

JUSTICE HUTCHINSON delivered the opinion of

the court:

Plaintiff, Mary G. Kerger, appeals from an order dismissing her action against defendant, Board of Trustees of Community College District No. 502, County of Du Page, and State of Illinois, a/k/a College of Du Page. Plaintiff argues that the trial court erred in dismissing her amended complaint pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 1994)) and in denying her motion for summary judgment. We affirm.

Plaintiff began teaching courses on business law at defendant's campus in the fall of 1993. She continued to work full time as a "replacement" teacher during the next six semesters. On January 17, 1996, approximately 2 ½ years into her employment, plaintiff received a notice of dismissal from defendant. The notice stated that the effective date of dismissal was June 11, 1996, pursuant to article III of the Public Community College Act (the Act) (110 ILCS 805/3-1 et seq. (West 1994)).

Plaintiff quickly pursued her remedies under the grievance procedure outlined in the collective bargaining agreement between defendant and the faculty association. Plaintiff requested the reasons for her dismissal and defendant informed her that she was only hired as a temporary employee and that it had reevaluated the ratio of students to faculty and eliminated a full-time position. Plaintiff filed her grievance. Her first meeting pursuant to the grievance procedure was held on February 12, 1996. Plaintiff chose to bring with her an "advisor/observer," in this case a court reporter who would create a stenographic record of the meeting.

Defendant rejected this stage of the grievance by a written response dated February 23, 1996. Defendant stated that the reasons for plaintiff's dismissal were succinctly stated in the notice of dismissal and that defendant was acting under its inherent management authority. Defendant admitted that plaintiff was not dismissed for reasons of "financial exigency," but was dismissed pursuant to the broad discretion inherently given to defendant.

Plaintiff filed her appeal under the grievance procedure on March 4, 1996. The parties then met for a second meeting. Defendant informed plaintiff that they would not conduct the meeting in the presence of the court reporter that plaintiff had brought as her advisor/observer. Plaintiff declared the meeting suspended until the board made a ruling on her right to have a court reporter as her advisor/observer.

Plaintiff filed a complaint in the trial court on March 27, 1996. Plaintiff sought the equitable relief of a permanent mandatory injunction to allow the grievance hearing to be held in the presence of the court reporter. Defendant moved to dismiss the complaint pursuant to section 2-615 of the Code. On July 22, 1996, the trial court granted defendant's motion to dismiss and denied Plaintiff's motion to amend the complaint. The trial court later vacated this order and granted plaintiff leave to amend her complaint.

Plaintiff filed her amended complaint on September 3, 1996. This complaint did not seek injunctive relief on the issue of the court reporter, but instead sought declaratory relief on plaintiff's right to continued employment and tenure.

Plaintiff first alleged that defendant did not have sufficient statutory basis for her dismissal. She noted that defendant did not dismiss her based on performance or financial exigency. Plaintiff also alleged that defendant was not decreasing the number of faculty members or discontinuing any teaching services or programs. Plaintiff interprets section 3B--3 of the Act (110 ILCS 805/3B-3 (West 1994)) to provide that nontenured teachers who are not properly dismissed under either section 3B--3 or 3B--5 will be considered reemployed for the following school year. Plaintiff. finally asserts that her reemployment would thus afford her tenure status under section 3B--3.

Defendant filed a motion to dismiss the amended complaint pursuant to section 2--615 of the Code (735 ILCS 5/2-615 (West 1994)). A hearing was held on this motion on September 26, 1996. The trial court examined the statute and acknowledged that defendant had not complied with every aspect of sections 3B--3 and 3B--5 of the Act. However, the trial court held that defendant acted within its common-law authority and granted its motion to dismiss the amended complaint. Plaintiff subsequently filed a motion for rehearing and a motion for summary judgment. The trial court denied both motions.

The central issue on appeal is rather simple, although not addressed succinctly by either party: whether the trial court erred in granting defendant's section 2--615 motion to dismiss the complaint. To determine the resolution of this issue, we must first evaluate the trial court's application and interpretation of the Act. Plaintiff also asserts that the trial court erred in denying her motion for summary judgment pursuant to section 2---1005 of the Code (735 ILCS 5/2-1005

West 1994)).

Before addressing the issues in this case, we note plaintiff's use of photocopied reproductions of statutory sections and pages from the record of proceedings within the text of the brief in chief. While the brief is 61 pages in length, it seems likely that the brief would exceed 75 pages if these sections had not been presented in a greatly reduced, dual-column format. Additionally, both parties have used numerous footnotes that contain substantive arguments more properly reserved for the text of the brief. We find this to be a violation of Supreme Court Rule 341 (155 Ill. 2dR. 341). Adherence to the page limitations and guidelines footnote usage is not an inconsequential matter. See Lagen v.Balcor Co., 274 Ill. App. 3d 11, 14-15 (1995). Nor are these limitations and guidelines arbitrary exercises of the supreme court's supervisory powers. 47th & State Currency Exchange, Inc. v. B. Coleman Corp., 56 Ill. App. 3d 229, 232 (1977). On the contrary, Rule 341 represents the Illinois Supreme Court's considered opinion of the format that best facilitates the clear and orderly presentation of arguments. Parties ignore Rule 341 at their peril. On our own motion, therefore, we strike all of the footnotes from all three briefs and the reduced statutory quotations and pages of record from plaintiff's brief in chief.

A section 2--615 motion admits all well-pleaded facts as true, but not conclusions of law or f actual conclusions that are unsupported by allegations of specific facts. Talbert v. Home Savings of America, F.A., 265 Ill. App.3d 376, 379 (1994). If, after disregarding any legal and factual conclusions, the complaint fails to allege sufficient facts to state a cause of action, the motion to dismiss should be

granted. Groenings v- City of St. Charles, 215 Ill. App. 3d 295, 299-300 (1991). In ruling on a motion to dismiss for the failure to state a cause of action, the complaint's factual allegations are to be interpreted in the light most favorable to the plaintiff, but factual deficiencies may not be cured by liberal construction. Groenings, 215 111. App. 3d at 300. "This process does not require the court to weigh findings of fact or determine credibility. As such, the reviewing court is not required to defer to the trial court's judgment and will review the matter de novo." T&S Signs, Inc. v. Village of Wadsworth, 261 Ill. App.3d 1080, 1084 (1994).

Applying a de novo standard, we review plaintiff's complaint. Plaintiff's complaint first alleges that defendant failed to comply with section 3B--3 of the Act, which states:

> "Every Board shall provide by rule or contract for a procedure to evaluate the performance and qualifications of non-tenure faculty members. If the implementation of such procedure results in a decision to dismiss a non-tenure faculty member for the ensuing school year or term, the Board shall give notice thereof to the faculty member not later than 60 days before the end of the school year or term. The specific reasons for the dismissal shall be confidential but shall be issued to the teacher upon request. If the Board fails to give such notice, within the time period, the faculty member shall be deemed reemployed for the ensuing school year. If the Board fails to give such notice within the time provided during the third year, or during the fourth year in the case of a one year extension, the faculty member shall enter upon tenure during the ensuing school year or term. "110 ILCS

805/3B-3 (West 1994).

This section requires a public community college to create an evaluation procedure and places restrictions upon the dismissal of faculty pursuant to these procedures.

Defendant asserts that it complied with the statute. Specifically, defendant argues that it created an evaluation procedure, evaluated plaintiff according to the procedure, and gave plaintiff timely notice. Defendant asserts that it is in compliance with this section even if it dismisses faculty members who have excellent evaluations. Defendant explains this assertion by arguing that, once an evaluation system is in place and implemented, nothing within this section prevents a public community college from exercising vast common-law discretion in the dismissal of nontenured teachers.

The preeminent goal of a court construing a statute is to give effect to the legislature's intent. Jahn v. Troy Fire Protection District, 163 Ill. 2d 275, 282 (1994). Statutory language is the best indicator of this intent, and where such language reveals the legislative drafters' intent, we may not resort to other aids for construction. People v. Brooks, 158 Ill. 2d 260, 264 (1994). "It is axiomatic that in interpreting a statute the language used by the legislature must be given its plain and ordinary meaning." People V. Brandon, 162 Ill. 2d 450, 460-61 (1994).

We determine that defendant's interpretation of the statute does represent the "plain and ordinary meaning" of the statute. Dismissing non-tenured faculty members who receive excellent evaluations cannot be seen as actions pursuant to the implementation of the evaluation procedure.

This interpretation is absurd and would render the entire section meaningless. Courts should avoid construing a statute in a manner that reduces any element of the legislation to mere surplusage. See, e.g., Bonaguro v. County Officers Electoral Board, 158 Ill. 2d 391, 397 (1994) (if possible, when determining the legislature's intent, statutes should be construed so each portion has meaning). Therefore, we reject defendant's argument and find that defendant's actions were not in compliance with section 3B--3.

Plaintiff also argues that defendant did not comply with section 3B--5 of the Act (110 ILCS 805/3B-5 (West 1994)). It does not appear that defendant really disputes this point, nor could it. This section would require defendant to provide plaintiff with a statement of honorary dismissal as part of the notice of dismissal. No such statement was provided to plaintiff. Therefore, we determine that defendant did not comply with the notice requirements of section 3B--5 of the Act.

However, our resolution of these arguments does not resolve this appeal. Defendant's adherence or nonadherence to these sections of the Act is only relevant if these sections are the exclusive vehicles for the dismissal of nontenured faculty members of a public community college. The trial found these sections of the Act inapplicable. At the same time, the trial court did find defendant's actions within the broad, common-law powers inherently given to a school board. In essence, the trial court found that these sections were not the exclusive remedies for dealing with the dismissal of nontenured teachers. Both parties have been consumed in their own arguments and have largely ignored the findings of the trial court.

It is unclear from the face of the statute whether the legislature intended to supplement or replace the common law with this enactment. We will look to the common law and then to the legislative history of the Act to determine its legislative intent. Under the common law, "[t]he employment of personnel is one of the nondelegable functions of school boards." Board of Trustees, Prairie State College v. Illinois Educational Labor Relations Board, 173 Ill. App. 3d 395, 413 (1988). "A school board has maximum flexibility regarding non-tenured employees." Board of Trustees of Community College District No. 508 V. Federation of College Clerical & Technical Personnel Local 1708, 153 Ill. App. 3d 37, 44 (1987). In general, Illinois statutes regarding teacher tenure are "in derogation of common law and must be strictly construed in favor of the school district." Stamper v. Board of Education of Elementary School District No. 143, 141 Ill. App. 3d 884, 888 (1986). Finally, it has been clearly established that the "legislature has given a community college board of trustees discretionary powers to rehire or terminate a nontenured teacher." Board of Trustees of Community College District No. 508 v. Cook County College Teachers Union Local 1600, 167 Ill. App. 3d 998, 1000 (1987).

A review of the legislative history of the Act reveals no intent to supersede the common law in this area. See 81st Ill. Gen. Assem., Senate Proceedings, May 24, 1979, at 227-30. The legislators were concerned because many community colleges had not established tenure programs. This area of the Act was designed to create a uniform system of tenure for community colleges in Illinois. The statute was not designed to create new restrictive and exclusive protections for nontenured teachers. Tenure was deemed important because

of the broad discretion the common law affords school boards in dismissing nontenured teachers. We do not believe that legislature intended to eliminate this discretion. Therefore, we find that both the common law and the Act are applicable to the dismissal of nontenured teachers from community colleges.

The amended complaint states that plaintiff disputes defendant's ability to dismiss her under its inherent discretionary managerial authority. The trial court found that defendant had such authority as a matter of law. We agree. The language of the Act makes this point very clearly as follows:

> "805/3--30. Powers of Board
>
> §3--30. The board of any community college district has the powers enumerated in Sections 3--31 through 3--43. This enumeration of powers is not exclusive but the board may exercise all other powers, not inconsistent with this Act, that may be requisite or proper for the maintenance, operation and development of any college or colleges under the jurisdiction of the board." 110 ILCS 805/3-30 (West 1996).

Accepting all of the factual allegations in plaintiff's complaint as true, we find that the complaint fails to state a claim upon which relief can be granted. Therefore, we affirm the trial court's dismissal of this complaint pursuant to section 2--615.

Affirming the trial court's dismissal of this action obviates the need to address whether the trial court erred in

denying plaintiff's motion for summary judgment.

For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

Affirmed.

INGLIS and BOWMAN, JJ., concur.

United States of America

2-96-1374

MARY G. KERGER,
Plaintiff-Appellant,

State of Illinois,
Appellate Court ss.
Second District,

v.

BOARD OF
TRUSTEES OF
COMMUNITY
COLLEGE DISTRICT
NO. 502, County of
Du Page, and State of
Illinois, a/k/a College of
Du Page,

Defendant-Appellee

I, LOREN J. STROTZ, Clerk of the Appellate Court, in and for said Second Judicial District of the State of Illinois, and the keeper of the Records and Seal thereof, do hereby certify that the foregoing is a true, full and complete copy of the decision of the said Appellate Court in the above entitled cause of record in my said office.

IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of the said Appellate Court, in Elgin, in said State, this 4th day of December, A.D. 1997.

"s\ Loren J. Strotz"
Clerk Appellate Court, Second District

APP 33

STATE OF ILLINOIS APPELLATE COURT
SECOND DISTRICT

OFFICE OF THE CLERK
847/695-3750

APPELLATE COURT
BUILDING
ELGIN, ILLINOIS
60120-5558

Appeal from the Circuit Court Of
County of DuPage

Trial Court No.: 96CH0280, 96CH280

THE COURT HAS THIS DAY, 02/04/98,ENTERED THE FOLLOWING ORDER IN THE CASE OF:

Gen. No.: 2-96-1374

Kerger, Mary G. v. Bd. of Trustees of Community College

Upon consideration of the Petition for Rehearing and Rule 316 Application for Certificate of Importance filed by appellant, Mary G. Kerger, the second Petition for Rehearing and the Certificate of Importance are hereby denied.

(Hutchinson, Inglis, Bowman, JJ.)

LOREN J. STROTZ Clerk

cc: Richter, Jaros & Robinson
Arthur G. Jaros, Jr.
Robbins, Schwartz, Nicholas, Lifton &Taylor, Ltd.
Everett E. Nicholas, Jr.
Frank B. Garrett, III

AMENDMENT 14
TO
CONSTITUTION OF THE UNITED STATES OF AMERICA

Section 1. Citizens of the United States.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or Property, without due Process of law; nor deny to any person within its jurisdiction the equal Protection of the laws.

ILLINOIS COMPILED STATUTES ANNOTATED
CHAPTER 110. HIGHER EDUCATION
PUBLIC COMMUNITY COLLEGES
ACT 805. PUBLIC COMMUNITY COLLEGE ACT
ARTICLE IIIB. TENURE

805/3B-1. Definitions

805/3B-2. Tenure

805/3B-3. Dismissal of Non-tenure Faculty Member

805/3B-4. Dismissal of Tenured Faculty Member for Cause

805/3B-5. Reduction in Number of Faculty Members

805/3B-6. Review under the Administrative Review Law

805/3B-1. Definitions

§ 3B-1. Definitions. As used in this Article, the following terms shall have the meanings hereinafter stated:

"District" means a Community College District.

"Board" means a Board of a Community College District.

"Faculty Member" means a full time employee of the District regularly engaged in teaching or academic support services, but excluding supervisors, administrators and clerical employees.

"School Year" means a regular academic year or its equivalent excluding summer school.

"Term" means a term within a school year.

"Notice" means a written notice delivered in person or deposited in the U.S. mail by certified or registered mail, postage prepaid, addressed to the faculty member's last known address.

805/3B-2. Tenure

§3B-2. Tenure. Any faculty member who has been employed in any district for a period of 3 consecutive school years shall enter upon tenure unless dismissed as hereinafter provided. However, a board may at its option extend such period for one additional school year by giving the faculty member notice not later than 60 days before the end of the school year or term during the school year or term immediately preceding the school year or term in which tenure would otherwise be conferred. Such notice must state the corrective actions which the faculty member should take to satisfactorily complete service requirements for tenure. The specific reasons for the one-year extension shall be confidential but shall be issued to the teacher upon request. The foregoing provision for a three-year period and optional

one-year extension shall not be construed to interfere with or abrogate local board rules or contracts which now or hereafter may provide for a lesser period of service before entering upon tenure. A tenured faculty member shall have a vested contract right in continued employment as a faculty member subject to termination only upon occurrence of one or more of the following:

a. Just cause for dismissal; or

b. A reduction in the number of faculty members employed by the board or a discontinuance of some particular type of teaching service or program.

805/3B-3. Dismissal of Non-tenure Faculty Member

§3B-3. Dismissal of Non-tenure Faculty Member. Every Board shall provide by rule or contract for a procedure to evaluate the performance and qualifications of non-tenure faculty members. If the implementation of such procedure results in a decision to dismiss a non-tenure faculty member for the ensuing school year or term, the Board shall give notice thereof to the faculty member not later than 60 days before the end of the school year or term. The specific reasons for the dismissal shall be confidential but shall be issued to the teacher upon request. If the Board fails to give such notice, within the time period, the faculty member shall be deemed reemployed for the ensuing school year. If the Board fails to give such notice within the time provided during the third year, or during the fourth year in the case of a one year extension, the faculty member shall enter upon tenure during the ensuing school year or term.

805/3B-4. Dismissal of Tenured Faculty Member for Cause

§3B-4. Dismissal of Tenured Faculty Member for Cause. If a dismissal of a tenured faculty member is sought for cause, the board must first approve a motion by a majority vote of all its members. The specific charges for dismissal shall be confidential but shall be issued to the tenured faculty member upon request. The Board decision shall be final unless the tenured faculty member within ten days requests in writing of the Board that a hearing be scheduled. If the faculty member within 10 days requests in writing that a hearing be scheduled, the Board shall schedule such hearing on those charges before a disinterested hearing officer on a date no less than 45 days, nor more than 70 days after the adoption of the motion. The hearing officer shall be selected from a list of 5 qualified arbitrators provided by a nationally recognized arbitration organization. Within 10 days after the teacher receives the notice of hearing, either the Board and the teacher mutually or the teacher alone shall request the list of qualified hearing officers from the arbitration organization. Within 5 days from receipt of the list, the Board and the teacher, or their legal representatives, shall alternately strike one name from the list until one name remains. The teacher shall make the first strike. Notice of such charges shall be served upon the tenured faculty member at least 21 days before the hearing date. Such notice shall contain a bill of particulars. The hearing shall be public at the request of either the tenured faculty member or the Board. The tenured faculty member has the privilege of being present at the hearing with counsel and of cross-examining witnesses and may offer evidence and witnesses and present defenses to the

charges. The hearing officer upon request by either party may issue subpoenas requiring the attendance of witnesses and production of documents. All testimony at the hearing shall be taken under oath administered by the hearing officer. The hearing officer shall cause a record of the proceedings to be kept and the Board shall employ a competent reporter to take stenographic or stenotype notes of all testimony. The costs of the reporter's attendance and services at the hearing and all other costs of the hearing shall be borne equally by the Board and the tenured faculty member. Either party desiring a transcript of the hearing shall pay for the cost thereof. If in the opinion of the Board the interests of the district require it the Board, after 20 days notice, may suspend the tenured faculty member pending the hearing, but if acquitted, the tenured faculty member shall not suffer the loss of any salary by reason of the suspension. The hearing officer shall, with reasonable dispatch, make a decision as to whether or not the tenured faculty member shall be dismissed and shall give a copy of the decision to both the tenured faculty member and the Board. The decision of the hearing officer shall be final and binding.

805/3B-5. Reduction in Number of Faculty Members

§ 3B-5. Reduction in Number of Faculty Members. If a dismissal of a faculty member for the ensuing school year results from the decision by the Board to decrease the number of faculty members employed by the Board or to discontinue some particular type of teaching service or program, notice shall be given the affected faculty member not later than 60

days before the end of the preceding school year, together with a statement of honorable dismissal and the reason therefor; provided that the employment of no tenured faculty member may be terminated under the provisions of this Section while any probationary faculty member, or any other employee with less seniority, is retained to render a service which the tenured employee is competent to render. In the event a tenured faculty member is not given notice within the time herein provided, he shall be deemed reemployed for the ensuing school year. Each board, unless otherwise provided in a collective bargaining agreement, shall each year establish a list, categorized by positions, showing the seniority of each faculty member for each position entailing services such faculty member is competent to render. Copies of the list shall be distributed to the exclusive employee representative on or before February 1 of each year. For the period of 24 months from the beginning of the school year for which the faculty member was dismissed, any faculty member shall have the preferred right to reappointment to a position entailing services he is competent to render prior to the appointment of any new faculty member; provided that no non-tenure faculty member or other employee with less seniority shall be employed to render a service which a tenured faculty member is competent to render.

805/3B-6. Review under the Administrative Review Law

§ 3B-6. Review under the Administrative Review Law. The provisions of the Administrative Review Law, and all amendments and modifications thereof and the rules adopted pursuant thereto, shall apply to and govern all

proceedings instituted for the judicial review of final administrative decisions of a hearing officer under Section 3B-4 of this Article. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure.

ILLINOIS COMPILED STATUTES ANNOTATED
COURT RULES
ILLINOIS SUPREME COURT RULES
ARTICLE III. CIVIL APPEALS RULES

Rule 317. Appeals from the Appellate Court to the Supreme Court as of Right

Appeals from the Appellate Court shall lie to the Supreme Court as a matter of right in cases in which a question under the Constitution of the United States or of this State arises for the first time in and as a result of the action of the Appellate Court. The appeal shall be initiated by filing a petition in the form prescribed by Rule 315, except that the petition shall be entitled "Petition for Appeal as a Matter of Right", item (1) of the petition shall state that the appeal is taken as a matter of right, and item (5) shall contain argument as to why appeal to the Supreme Court lies as a matter of right. In other respects the procedure is governed by Rule 315. If leave to appeal is to be sought in the alternative, the request therefor must be included in the same petition, and item (1) thereof shall include an alternative prayer for leave to appeal, and item (5) the argument as to why in the alternative leave to appeal should be allowed as a matter of sound

judicial discretion. When both appeal as a matter of right and leave to appeal are sought, both requests will be disposed of by a single order. If the court allows the petition, briefs and abstracts in cases in which they are required, shall be filed as provided in the case of appeal by leave under Rule 315.

Rule 341. Briefs

(a) Page Limitations. Unless authorized by order of the reviewing court or a judge thereof, the appellant's brief and the appellee's brief, excluding only those matters required by Rule 342(a) to be appended thereto, shall each be limited to 50 pages if printed, or 75 pages if not printed, and the reply brief to 20 pages if printed, or 27 pages if not printed. Neither narrow margins nor any other device shall be employed to evade the page limitation. Footnotes, if any, shall be used sparingly. A motion to authorize the filing of briefs in excess of the limitations of this rule shall be filed not less than 10 days before the brief is due (not less than 5 days in the case of reply briefs) and shall state the maximum number of pages requested. Motions to allow additional pages are not favored, and the specific grounds establishing the necessity for excess pages shall be clearly set forth in an affidavit filed in support of the motion.

(b) Cover. The cover of the brief shall contain the number of the case in the reviewing court and the name of that court, the name of the court from which the case was brought, and of the case as it appeared in the trial court, except that the status of each party in the reviewing court shall also be indicated (e.g., plaintiff-appellant). The name of the trial judge entering the judgment to be reviewed, and the

individual names and addresses of the attorneys (or of the party if the party has no attorney) filing the brief, and, if desired, of their law firm, shall also be stated.

(c) References to Parties. In the brief the parties shall be referred to as in the trial court, e.g., plaintiff and defendant, omitting the words appellant and appellee and petitioner and respondent, or by using actual names or descriptive terms such as "the employee," "the injured person," "the taxpayer," "the railroad," etc.

(d) Citations. Citations shall be made as provided in Rule 6.

(e) Appellant's Brief. The appellant's brief shall contain the following parts in the order named:

(1) A summary statement, entitled "Points and Authorities," of the points argued and the authorities cited in the Argument. This shall consist of the headings of the points and subpoints as in the Argument, with the citation under each heading of the authorities relied upon or distinguished, and a reference to the page of the brief on which each heading and each authority appear. Cases shall be cited as near as may be in the order of their importance.

(2) An introductory paragraph stating (i) the nature of the action and of the judgment appealed from and whether the judgment is based upon the verdict of a jury, and (ii) whether any question is raised on the pleadings and, if so, the nature of the question.

Illustration:

"This action was brought to recover damages occasioned by the alleged negligence of the defendant in driving his automobile. The jury rendered a verdict for the plaintiff upon which the court entered the judgment from which this appeal is taken. No questions are raised on the pleadings."

(3) A statement of the issue or issues presented for review, without detail or citation of authorities.

Illustration:

Issue Presented for Review:

"Whether the plaintiff was guilty of contributory

negligence as a matter of law."

[or]

"Whether the trial court ruled correctly on certain objections to evidence."

[or]

"Whether the jury was improperly instructed."

The appellant must include a concise statement of the applicable standard of review for each issue, with citation to authority, either in the discussion of the issue in the argument or under a separate heading placed before the discussion in the argument.

(4) A statement of jurisdiction:

(i) In a case appealed to the Supreme Court directly from the trial court or as a matter of right from the Appellate Court, a brief statement under the heading "Jurisdiction" of the jurisdictional grounds for the appeal to the Supreme Court.

(ii) In a case appealed to the Appellate Court, a brief, but precise statement or explanation under the heading "Jurisdiction" of the basis for appeal including the supreme court rule or other law which confers jurisdiction upon the reviewing court; the facts of the case which bring it within this rule or other law; and the date that the order being appealed was entered and any other facts which are necessary

to demonstrate that the appeal is timely. In appeals from a judgment as to all the claims and all the parties, the statement shall demonstrate the disposition of all claims and all parties. All facts recited in this statement shall be supported by page references to the record on appeal.

(5) In a case involving the construction or validity of a statute, constitutional provision, treaty, ordinance, or regulation, the pertinent parts of the provision verbatim, with a citation of the place where it may be found, all under an appropriate heading, such as "Statutes Involved." If the provision involved is lengthy, its citation alone will suffice at this point, and its pertinent text shall be set forth in an appendix.

(6) Statement of Facts, which shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal, e.g., R. C7, or R. 7, or to the pages of the abstract, e.g., A. 7. Exhibits may be cited by reference to pages of the abstract or of the record on appeal or by exhibit number followed by the page number within the exhibit, e.g., Pl.Ex. 1, p. 6.

(7) Argument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on. Evidence shall not be copied at length, but reference shall be made to the pages of the record on appeal or abstract, if any, where evidence may be found. Citation of numerous authorities in support of the same point is not favored. Points not argued are waived and shall not be raised in the reply brief, in oral

argument, or on petition for rehearing.

(8) A short conclusion stating the precise relief sought, followed by the names of counsel as on the cover.

(9) An appendix as required by Rule 342.

(f) Briefs of Appellee and Other Parties. The brief for the appellee and other parties shall conform to the foregoing requirements, except that items (2), (3), (4), (5), (6) and (9) of paragraph (e) of this rule need not be included except to the extent that the presentation by the appellant is deemed unsatisfactory.

(g) Reply Brief. The reply brief, if any, shall be confined strictly to replying to arguments presented in the brief of the appellee and need contain only Argument.

(h) Supplemental Brief on Leave to Appeal. A party allowing a petition for leave to appeal or for appeal as a matter of right or an answer thereto to stand as his or her main brief, may file a supplemental brief, so entitled, containing additional material, and omitting any of the items set forth in paragraph (e) of this rule to the extent that they are adequately covered in the petition or answer. The Points and Authorities in the supplemental brief need relate only to the contents of that brief.

Rule 344. Number of Copies, Service, and Form and Method of Reproduction of Briefs and Abstracts

(a) Number of Copies To Be Filed and Served; Proof of Service. Except as provided hereafter nine copies of the abstract, if any, and of each brief shall be filed in appeals to the Appellate Court. In proceedings in the Appellate Court to review orders of the Industrial Commission, 15 copies of the abstract, if any, and of each brief shall be filed. In appeals to the Supreme Court, 20 copies of the abstract, if any, and of each brief shall be filed. Three copies shall be served upon each other party to the appeal represented by separate counsel. If the Attorney General and the State's Attorney both appear for a party, each shall be served with three copies. Proof of service shall be filed with all briefs and abstracts.

(b) Form of Briefs and Abstracts. The briefs and abstracts, if any, shall be produced on good white paper by any printing, duplicating, or copying process that provides a clear image. Original typewritten pages may be used, but not carbon copies. If printed, the brief shall be on paper 6 3/4 by 10 inches in type not smaller than 11 point. Footnotes are discouraged. If not printed, the brief shall be legibly and neatly produced on paper 8 ½ by 11 inches, securely bound on the left side, double spaced, with the text in type not smaller than standard elite typewriting and not to exceed 6 inches by 8 ½ . Briefs or abstracts prepared by the offset process may conform with either of the foregoing specifications. Whether printed or not printed, all copies of such documents shall have a safe and secure method of binding.

In a case in which briefs or other documents requiring reproduction are to be filed with the reviewing courts on behalf of indigents, such briefs or other documents must be reproduced by an inexpensive legible method.

(c) Color of Covers. The colors of the covers of the documents shall be: abstract, gray; appellant's brief or petition, white; appellee's brief or answer, light blue; appellant's reply brief, light yellow; reply brief of appellee, light red; petition for rehearing, light green; answer to petition for rehearing, tan; and reply on rehearing, orange. If a separate appendix is filed, the cover shall be the same color as that of the brief which it accompanies.

Rule 352. Conduct of Oral Arguments

(a) Request; Waiver; Dispensing With Oral Argument. A party shall request oral argument by stating at the bottom of the cover page of his or her brief that oral argument is requested, or, if the party has allowed a petition for leave to appeal or answer to stand as his or her brief, by mailing to the clerk and to opposing parties, within the time in which the party could have filed a further brief, a notice requesting oral argument. If any party so requests, all other parties may argue without an additional request. No party may argue unless that party has filed a brief as required by the rules and paid any fee required by law. A party who has requested oral argument and who thereafter determines to waive oral argument shall promptly notify the clerk and all other parties. Any other party who has filed a brief without requesting oral argument may then request oral argument

upon prompt notice to the clerk and all other parties.

After the briefs have been filed, the court may dispose of any case without oral argument if no substantial question is presented, but this power should be exercised sparingly.

(b) Length. Unless the court otherwise orders, in a capital case each side shall be allowed not to exceed 30 minutes for its main argument. In a noncapital case, each side shall be allowed not to exceed 20 minutes for its main argument. In all cases, the appellant shall have not to exceed an additional 10 minutes strictly confined to rebuttal. If only one side argues, the argument shall not exceed 15 minutes. The court may grant additional time on motion filed in advance of the date fixed for hearing if it appears that additional time is necessary for the adequate presentation of the case. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(c) Reading Prohibited. Reading at length from the record, briefs, or authorities cited will not be permitted.

(d) Divided Arguments. No more than two counsel will be heard from each side except by leave of court, which will be granted when there are several parties on the same side with diverse interests. Divided arguments are not favored and care shall be taken to avoid duplication of arguments.

(e) Multiple Parties. If a case involves appeals by more than one party the sequence of oral argument shall be as

the parties agree or as the court directs.

(f) Limitation on Briefs and Memoranda. No brief or memorandum shall be filed after the due date of the reply brief or after oral argument except by leave of court or a judge thereof.

(g) When Oral Argument Not Requested. If a case is submitted to the court without request for oral argument, it shall be decided on the briefs unless the court orders oral argument.

Rule 375. Failure to Comply With Rules; Frivolous Appeals--Sanctions

(a) Failure to Comply With Appeals Rules. If after reasonable notice and an opportunity to respond, a party or an attorney for a party or parties is determined to have wilfully failed to comply with the appeal rules, appropriate sanctions may be imposed upon such a party or attorney for the failure to comply with these rules. Appropriate sanctions for violations of this section may include an order that a party be barred from presenting a claim or defense relating to any issue to which refusal or failure to comply with the rules relates, or that judgment be entered on that issue as to the other party, or that a dismissal of a party's appeal as to that issue be entered, or that any portion of a party's brief relating to that issue be stricken. Additionally, sanctions involving an order to pay a fine, where appropriate, may also be ordered against any party or attorney for a party or parties.

(b) Appeal or Other Action Not Taken in Good Faith; Frivolous Appeals or Other Actions. If, after consideration of an appeal or other action pursued in a reviewing court, it is determined that the appeal or other action itself is frivolous, or that an appeal or other action was not taken in good faith, for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, or the manner of prosecuting or defending the appeal or other action is for such purpose, an appropriate sanction may be imposed upon any party or the attorney or attorneys of the party or parties. An appeal or other action will be deemed frivolous where it is not reasonably well grounded in fact and not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law. An appeal or other action will be deemed to have been taken or prosecuted for an improper purpose where the primary purpose of the appeal or other action is to delay, harass, or cause needless expense.

Appropriate sanctions for violation of this section may include an order to pay to the other party or parties damages, the reasonable costs of the appeal or other action, and any other expenses necessarily incurred by the filing of the appeal or other action, including reasonable attorney fees.

A reviewing court may impose a sanction upon a party or an attorney for a party upon the motion of another party or parties, or on the reviewing court's own initiative where the court deems it appropriate. If the reviewing court initiates the sanction, it shall require the party or attorney, or both, to show cause why such a sanction should not be imposed before imposing the sanction. Where a sanction is imposed, the reviewing court will set forth the reasons and basis for the sanction in its opinion or in a separate written order.

ILLINOIS COMPILED STATUTES ANNOTATED
COURT RULES
ILLINOIS SUPREME COURT RULES
ARTICLE VIII. ILLINOIS RULES OF PROFESSIONAL CONDUCT

Rule 8.3. Reporting Professional Misconduct

(a) A lawyer possessing knowledge not otherwise protected as a confidence by these Rules or by law that another lawyer has committed a violation of Rule 8.4(a)(3) or (a)(4) shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

(b) A lawyer possessing knowledge not otherwise protected as a confidence by these Rules or by law that a judge has committed a violation of the Code of Judicial Conduct which raises a question as to the judge's fitness for office shall inform the appropriate authority.

(c) Upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges, a lawyer possessing information not otherwise protected as a confidence by these Rules or by law concerning another lawyer or a judge shall reveal fully such information.

(d) A lawyer who has been disciplined as a result of a lawyer disciplinary action brought before any body other than the Illinois Attorney Registration and Disciplinary

Commission shall report that fact to the Commission.

ILLINOIS SUPREME COURT RULES
ARTICLE I. GENERAL RULES
CODE OF JUDICIAL CONDUCT

Rule 63. [A Judge Should Perform the Duties of Judicial Office Impartially and Diligently]

CANON 3

A Judge Should Perform the Duties of Judicial Office Impartially and Diligently

The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before the judge.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(c) A judge may, with the consent of the parties, confer separately with the parties and their

lawyers in an effort to mediate or settle matters pending before the judge.

(d) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

(5) A judge shall devote full time to his or her judicial duties; and should dispose promptly of the business of the court.

(6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to the judge's direction and control. This paragraph does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(7) Proceedings in court should be conducted with fitting dignity, decorum, and without distraction. The taking of photographs in the courtroom during sessions of the court or recesses between proceedings, and the broadcasting or televising of court proceedings is permitted only to the extent authorized by order of the supreme court.

(8) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, or national origin, and shall not permit staff, court officials and others subject to the judge's direction and

control to do so.

(9) Proceedings before a judge shall be conducted without any manifestation, by words or conduct, of prejudice based upon race, sex, religion, or national origin, by parties, jurors, witnesses, counsel, or others. This section does not preclude legitimate advocacy when these or similar factors are issues in the proceedings.

B. Administrative Responsibilities.

(1) A judge should diligently discharge the judge's administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge.

(3) A judge having knowledge of a violation of these canons on the part of a judge or a violation of Rule 8.4 of the Rules of Professional Conduct on the part of a lawyer shall take or initiate appropriate disciplinary measures.

(4) A judge should not make unnecessary appointments. A judge should exercise the power of appointment on the basis of merit, avoiding nepotism and favoritism. A judge should not approve compensation of appointees beyond the fair value of services rendered.

(5) A judge should refrain from casting a vote for the appointment or reappointment to the office of associate judge, of the judge's spouse or of any person known by the judge to be within the third degree of relationship to the judge or the judge's spouse (or the spouse of such a person).

C. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

(c) the judge was, within the preceding three years, associated in the private practice of law with any law firm or lawyer currently representing any party in the controversy (provided that referral of cases when no monetary interest was retained shall not be deemed an association within the meaning of this subparagraph) or, for a period of seven years following the last date on which the judge represented any party to the controversy while the judge was an

attorney engaged in the private practice of law;

(d) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding, or has any other more than de minimis interest that could be substantially affected by the proceeding; or

(e) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding; or

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

(2) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

D. Remittal of Disqualification. A judge disqualified by the terms of Section 3C may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. This agreement shall be incorporated in the record of the proceeding.

DOCKET NO. 2-96-1374

IN THE ILLINOIS APPELLATE COURT
SECOND JUDICIAL DISTRICT

MARY G. KERGER, Plaintiff/Appellant,	) Appeal from the) Eighteenth) Judicial Circuit,) Du Page County,) Illinois
vs.	) Circuit Court) Case No.) 96 CH 0280
BOARD OF TRUSTEES OF COMMUNITY COLLEGE DISTRICT NO. 502, County of DuPage and State of Illinois, a/k/a COLLEGE OF DUPAGE Defendant/Appellee.	))))) The Honorable) Bonnie M. Wheaton) Presiding

R.P.C. 8.3(b) REPORT OF VIOLATION OF CODE OF JUDICIAL CONDUCT RAISING QUESTION OF FITNESS FOR OFFICE AND ILLINOIS SUPREME COURT RULE 361 AND 63C MOTION TO DISQUALIFY

NOW COME both MARY G. KERGER, Plaintiff-Appellant, herself a member of the bar of the State of Illinois, and her attorney in the instant litigation, ARTHUR G. JAROS, JR. of RICHTER, JAROS & ROBINSON and, pursuant to Rule of Professional Conduct 8.3(b) and Illinois Supreme Court Rule 63, file this report of multiple violations of the Code of Judicial Conduct by Justice Susan F. Hutchinson which raise questions of her fitness for office. The undersigned also move pursuant to Illinois Supreme Court Rules 361 and 63C for disqualification of Justice Susan F. Hutchinson from further participation in the instant case (including participation in the Petition for Rehearing) on account of partiality and bias, within the meaning of Ill.S.Ct. Rule 63 C(1)(a), against Attorney Jaros.

BACKGROUND

On November 21, 1996, Attorney Jaros on behalf of Plaintiff Kerger filed a Rule 303 Notice of Appeal from a final judgment order of The Honorable Bonnie M. Wheaton. The case was briefed and, although not requested by the brief of either party, set for oral argument (Exhibit A) presumably under Illinois Supreme Court Rule 352(g). In this regard, upon receipt of Exhibit A, the undersigned Attorney Jaros

contacted a member of the Office of the Clerk of the Court who confirmed, after consultation with the Court, that the notice of oral argument had not been sent in error and that the Court was, in fact, directing that oral argument occur. Notice of intent to argue was then promptly given by Attorney Jaros on behalf of Plaintiff-Appellant Kerger on July 23, 1997 (Exhibit B). On August 5, 1997, the court entered an Order (Exhibit C) dispensing with oral argument, expressly referring to Illinois Supreme Court Rule 352(a).

On October 17, 1997, Justice Susan F. Hutchinson delivered the Opinion of the court with direction that it be published in full. At pages 4 and 5 of the Opinion, Justice Hutchinson levels multiple criticisms against Plaintiff's counsel, culminating in the imposition of the sanction of striking, without warning, from Appellant's Brief of all footnotes and "reduced statutory quotations."

THE APPLICABLE LAW

Canon 3A of the Illinois Code of Judicial Conduct (Ill.S.Ct. Rule 63) provides in relevant part with respect to Adjudicative Responsibilities as follows:

(1) A judge should be faithful to the law and maintain professional competence in it. (Canon 3A.(1)) (See Part II below)

(2) A judge should be patient, dignified and courteous to ... lawyers.(Canon 3A.(3)) (Included in Parts I and II below)

(8) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by word or conduct manifest bias or prejudice... (Canon 3A.(8)). (See Part I below)

(emphasis added)

Canon 3 further provides in Section 3C pertaining to Disqualification that "A judge shall disqualify .. herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning...a party's lawyer... ."

> Rule of Professional Conduct 8.3(b) states:
> A lawyer possessing knowledge not otherwise protected as a confidence by these Rules or by law that a judge has committed a violation of the Code of Judicial Conduct which raises a question as to the judge's fitness for office shall inform the appropriate authority.

(emphasis added)

I. BIAS AGAINST PLAINTIFF'S COUNSEL

A] Footnotes

Page 5 of the Opinion states:

> Additionally, the brief in chief contained numerous footnotes that consisted of substantive arguments more properly reserved for the text of the brief. Beyond merely annoying the court, plaintiff's counsel also managed to violate various sections of Supreme Court Rule 341 (155 Ill.2d R.341). Adherence to the page limitations and guidelines for footnote usage is not an inconsequential matter. See Lagen v. Balcor Co., 274 Ill.App.3d 11, 14-15 (1995). Nor are these limitations and guidelines arbitrary exercises of the supreme court's supervisory powers. 47th & State Currency Exchange, Inc. v. B. Coleman Corp., 56 Ill.App.3d 229, 232 (1977). On the contrary, Rule 341 represents the Illinois Supreme Court's considered opinion of the format that best facilitates the clear and orderly presentation of arguments. Parties ignore Rule 341 at their peril. On our own motion, therefore, we strike from plaintiff's brief all footnotes and reduced statutory quotations. (emphasis added)

Supreme Court Rule 341, not quoted by the Opinion, does not ban the use of footnotes but rather provides that they "shall be used sparingly." A review (the results of which are set forth in Exhibit D) of the three briefs filed shows that Defendant-Appellee's Brief relied on footnotes particularly to raise substantive arguments to a much greater degree, given the length of the respective briefs, than the briefs of the Plaintiff-Appellant, yet drew no criticism. In this regard, Exhibit D shows that the Defendant-Appellee used seven footnotes of which five were argumentative in a Brief which was only 19 ½ pages long. In contrast, the Brief of Plaintiff-Appellant used 17 footnotes over 61 pages and only three of which footnotes contained argument. The Opinion of the court referred to this Brief (i.e., "the brief in chief") as containing "numerous footnotes that consisted of substantive arguments." No reasonable person would consider to be "numerous" a total of three such footnotes in a brief which is over 60 pages in length. Similarly, the Reply Brief, used 9 footnotes over a total of 27 pages of which only five footnotes contained argument. Exhibit D shows that each attorney used footnotes of all types at a rate of about 1 for every 3 pages of text. Argumentative footnotes were used by the Appellee's attorney at a rate of 1 for every 2.3 pages of argument whereas Appellant's counsel used argumentative footnotes at a far more sparing rate of 1 for every 7.75 pages of argument.

Yet, Justice Hutchinson bitterly criticized Appellant's counsel in a published opinion and left

opposing counsel unscathed, a clear sign of partiality.

Additional evidence of bias is that fact that Appellee's counsel used within the Statement of Facts an argumentative footnote (footnote #2, p.7 of Appellee's Brief) in clear violation of Ill.S.Ct. Rule 341(e)(6) and (f). That Rule prohibits the use of argument within the Statement of Facts. Yet Justice Hutchinson's Opinion imposed no sanction for such violation.

Moreover, the drastic sanction came without warning, without opportunity to cure or otherwise respond and without precedent in law. The "footnote abuse" cases decided under Rule 341 all appear to involve a far greater number of footnotes (Getschaw v. Comm.Ed.), 111 Ill.App.3d 522, 67 Ill.Dec. 343 (First District 1982), 100 footnotes in three briefs; Zurich Insurance Co. v. Baxter International, Inc., 275 Ill.App.3d 30, 211 Ill.Dec. 790 (Second District 1995), 75 footnotes in three briefs. Here, there were only 33 footnotes--of which 13 contained argument--in all three briefs in aggregate. The facts here are thus wholly different than in Lagen v. Balcor Co., 274 Ill.App.3d 229, 210 Ill.Dec. 773. There, a single brief contained 35 footnotes and the use of footnotes was deliberately used to circumvent the 75 page limitation on briefs.

Justice Hutchinson's striking, without warning or opportunity to cure or otherwise respond, of all footnotes contained in the undersigned counsel's brief

which used footnotes more sparingly than the brief of his counterpart demonstrates both bias (Ill. S.Ct. Rule 63, Canon 3A.(8)) against the undersigned counsel, and a fundamental lack of patience, dignity and courtesy (Ill. S.Ct. Rule 63, Canon 3A.(3)) to the undersigned. The undersigned Attorney Jaros' good name and reputation is now about to be arbitrarily and discriminatorily maligned in a published opinion of this Court. The competence of Attorney Jaros as an appellate advocate is amply demonstrated by the results of his work before this Court, including the following more recent appeals:

> Passon v. TCR, Inc., 2-92-1161 (242 Ill.App.3d 259; 181 Ill.Dec. 872), representing Defendant-Appellant reversing grant of preliminary injunction by Judge John W. Darrah (Opinion by Justice Geiger with Justices Doyle and Quetsch concurring)
>
> MXL Industries v. Mulder, 2-93-0008 (252 Ill.App.3d 18, 191 Ill.Dec. 124), representing Defendant/Counter-Plaintiff-Appellee, affirming money judgment on counterclaim by Judge S. Keith Lewis (Opinion by Justice Doyle with Justices Inglis and Colwell concurring)
>
> Wellness, Inc. v. Wall, 2-94-1401, representing Plaintiff-Appellant, reversing dismissal of case by Judge John Teschner

O'Connell v. Okura & Co., 2-95-0920, representing Plaintiff-Appellant, reversing dismissal of case by Judge William Black

Richter, Jaros & Dudgeon v. Frank O. Butler II, 2-95-1284, representing Plaintiffs-Appellees, affirming grant of summary judgment by Judge Richard Lucas

B] Page Limitations --

The aforesaid portion of the Court's opinion also expressly refers to "page limitations" and thereby implies that Plaintiff's counsel violated the page limitations on Briefs. Neither of Plaintiff's Briefs were printed but rather were in standard Pica type (10 characters per inch) on standard 8.5" by 11" paper (See Rule 344(b)). Accordingly, under Rule 341, the applicable limit was 75 pages for Appellant's Brief and 27 pages for the Reply Brief.

In fact, Appellant's Brief was 61 pages and the Reply Brief was less than 27 full pages, taking into account a partial page at page 2 thereof. Moreover, S.Ct. Rule 344(b) lawfully permits briefs on appeal to be submitted using "elite" type (12 characters per inch), instead of Pica type (10 characters per inch), which in effect allows approximately 20% more text per page; thus it is clear that page limitations were not even close to being violated in the instant case. Even if all of the stricken footnotes had been included in the body of the Brief and all of the statutory texts typed

therein, the 75 page limit would clearly not have been exceeded, the Brief in its current form being 14 pages under that limit. Accordingly, there was no basis for Justice Hutchinson to publicly imply that Plaintiff's counsel had violated the page limitations and such implication constitutes a plain discourtesy to counsel in violation of Judicial Canon 3A.(3).

C] Reduced Statutory Quotations –

The last sentence on page 4 of the Court's opinion reads:

> A magnifying glass should have been provided with each brief to aid the court in its reading of statutes presented in a greatly reduced, dual-column format. (emphasis added)

The Opinion then announced it was striking all "reduced statutory quotations."

In point of fact, neither of the Plaintiff's Briefs contained a single instance of a "reduced, dual-column format" reproduction of a statute. Moreover, a sample comparison of the Appellant's Brief as filed using photocopied statutes (Exhibit E, page 1) with two different typed versions in elite type (Exhibit E, pages 2-4) permitted under Rule 344(b) fails to reveal any abuse or violation of the rules. Just as inexplicable is Justice Hutchinson's express attack on both of the undersigned's Briefs ("each brief" in contrast to the Opinion's twice used term "brief in chief"). In

additional point of fact, the Reply Brief does not contain a single use of any reproduction -- statutory or otherwise -- in any form.

It is Appellee's Brief which, in its Appendix, contains poorly reproduced and unnumbered pages from proceedings before the General Assembly. The only part of Appellant's Brief which could be said to be "greatly reduced dual column format" is page 19 of the Statement of Facts which reproduced a portion of the trial court's oral ruling and colloquy with counsel. The reduction was obviously not done to avoid the page limitations (there being 14 additional pages available (even more, using permitted elite sized type) under the 75 page limit!). It was rather done for hoped-for convenience in presentation which Attorney Jaros believed would facilitate the review process. The reproduced text contained a citation to the Record on Appeal so that the Court could locate and read the full size transcript contained therein. More importantly, the undersigned counsel would gladly have submitted an amended Brief if the apparently offensive nature of the format of that page had been made known.

D] "Dizzying Array of Type Sizes, Fonts and Formats"

At page 4 of the Opinion, Justice Hutchinson criticizes the undersigned for use of a dizzying array of type sizes, fonts and formats. This is apparently a reference to the "Statutes Involved" portion of

Appellant's Brief at pages 6-11. As demonstrated below, the undersigned's long-standing and never before criticized practice both in the Circuit and Appellate Courts is to literally reproduce (by photocopying) key excerpts from Reports of Proceedings and statutory texts (together with their relevant headings) directly from the transcript or statute book in order to assure the court of accuracy and, in the case of statutes, to ensure compliance with Rule 341(e)(5)'s express requirement that the statutory text be set forth "verbatim." In the instant case, the size, fonts and formats are those used by Michie's Illinois Compiled Statutes Annotated. It is puzzling and not reasonably foreseeable by a practicing attorney that a Justice of our Appellate Court would be "dizzied" by being confronted with the format of an established Illinois legal publisher. In any event, the use of such sizes, fonts, and formats did not impact in any way on page limitations.

In addition, opposing counsel's Appellee's Brief used a variety of font styles (including use of italics, bolding, underlining, capitalization and combinations thereof) and type sizes (including minuscule print size for footnotes) yet drew absolutely no criticism whatsoever from Justice Hutchinson.

The aforenoted practice of reproducing the precise statutory text from the statute books or precise excerpts from Reports of Proceedings has long been followed by the undersigned in his trial and appellate practice without criticism from any judges, justices or

opposing attorneys. See, for example, the attached excerpts from Briefs filed in Attorney Jaros' recent appeals to the Illinois Appellate Court, Second District:

1) Wellness, Inc. v. Wall, #2-94-1401, Brief of Plaintiff-Appellant (Excerpts attached as Exhibit F hereto); dismissal of action reversed by Rule 23 Order by Justice Doyle, with Justices Inglis and Hutchinson concurring (Exhibit G hereto)

2) Richter, Jaros & Dudgeon v. Butler, #2-95-1284, Brief of Plaintiffs-Appellees, Pro Se, (Exhibit H), summary judgment affirmed by Rule 23 Order by Justice Geiger with Justices McLaren and Hutchinson concurring (Exhibit I hereto)

For Justice Hutchinson without warning to lash out in discriminatory fashion by singling out Plaintiff's counsel for violating her own unpublished, unknowable predilections and to impose the drastic sanction of striking whole portions of a Brief is an exercise of undignified, raw, untempered and arbitrary judicial power not befitting the judicial system of the State of Illinois.

The Code of Judicial Conduct requires a judge to disqualify herself where her "impartiality might reasonably be questioned including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning a ... party's lawyer ..." (Canon 3C.(1)(a)). The foregoing discussion demonstrates that the Opinion written by Justice Hutchinson does evince a lack of impartiality and the presence of apparent bias or prejudice against Plaintiff's attorney in what might have been considered a politically charged case involving tenure rights. The Judicial Canons do not even require the existence of actual partiality or bias but only a demonstration that there be a reasonable question about the judge's impartiality and/or bias. The Opinion by Justice Hutchinson is clear evidence that reasonable question does exist.

Wherefore, the undersigned move the Court and Justice Hutchinson to disqualify herself from further involvement in this case including consideration of the Petition for Rehearing.

II. JUSTICE HUTCHINSON WAS NOT FAITHFUL TO, AND DID NOT MAINTAIN PROFESSIONAL COMPETENCE IN, THE LAW (Canon 3A.(1))

The following points are submitted not as a basis for the foregoing motion to disqualify but solely to comply with R.P.C. 8.3(b).

A] The Opinion by Justice Hutchinson, as noted in the first portion of this memorandum, imposed the

sanction of striking parts of Appellant's Brief. Not only did such action demonstrate bias against Plaintiff's counsel as explained above, such action expressly violated Illinois Supreme Court Rule 375(a). That Rule (see Exhibit J) permits imposition of the sanction of striking a part of a brief only "after reasonable notice and opportunity to respond" and only after a violation of the appeal rules is found to be "wilful." Justice Hutchinson violated Rule 375(a) by imposing the sanction of striking parts of Appellant's Brief without any notice (reasonable or otherwise), without affording an "opportunity to respond," and without making the required finding of "wilfulness." An Appellate Justice who violates Supreme Court Rules governing Appellate practice demonstrates neither faithfulness to the law nor professional competence in it, the same giving rise to questions concerning fitness (within the purview of R.P.C. 8.3(b)) to hold the critical position of Justice of our State's Appellate Court--frequently our citizens' court of final review. Justice Hutchinson's Opinion does correctly note that the Supreme Court rules governing length of briefs and use of footnotes are not "arbitrary exercises of the supreme court's supervisory power." What was and is an arbitrary exercise of power is Justice Hutchinson's imposition of sanctions in the instant case in violation of due process and of Rule 375(a) and in unwarranted and discriminatory manner.

B] At page four, the Opinion by Justice Hutchinson reads:

> The central issue on appeal is rather simple, although not identified succinctly by either party: whether the trial court erred in granting Defendant's §2-615 motion to dismiss the complaint. (emphasis added)

At page four of Appellant's Brief in the Statement of Issues section thereof, Plaintiff's counsel did succinctly identify the primary issue on appeal as follows:

> DID THE TRIAL COURT ERR IN GRANTING DEFENDANT'S SECTION 2-615 MOTION TO DISMISS THE AMENDED COMPLAINT FOR FAILURE TO PLEAD FACTS SUFFICIENT TO STATE A CAUSE OF ACTION UNDER THE LAST TWO SENTENCES OF 110 ILCS 805/3B-3?

For Justice Hutchinson to charge in a published Opinion that Plaintiff's counsel did not succinctly identify the central issue is demonstrably and patently false and calls into question the care with which she read Plaintiff's Briefs and/or her judicial competence within the meaning of Judicial Canon 3A(1) to understand it.

C] In addition to the bias identified in Part I above and the additional points set forth in parts II A and B above pertaining to lack of competence in and faithfulness to the law, attention is directed to the fact that the undersigned are filing contemporaneously herewith a Petition for Rehearing.

S.Ct. Rule 367(b) provides that the Petition for Rehearing procedure may be used for points "overlooked" or "misapprehended" by the Court. Our law thusly recognizes that human judges are not infallible; to be sure, the mere committing of an "oversight" or a "misapprehension" does not per se call into question a judge's competence or, without more, invoke the reporting requirement of R.P.C. 8.3(b).

However, when multiple occurrences in a single case of violations of the various Judicial Canons (i.e., bias, discourtesy, incompetence) are present, then the question arises--where gross defects in legal reasoning and a refusal or failure to address statutory authority are present which accompany the other violations--whether the judge has demonstrated such a degree of lack of competence under Canon 3A.(1) as to raise a question under R.P.C. 8.3(b) of the judge's fitness for the position and its accompanying responsibility of rightly judging cases of our citizens assigned to him or her.

The undersigned believe that the facts set forth in the Petition for Rehearing raise precisely that question. However, none of those arguments contained in the Petition for Rehearing--which arguments necessarily go to the merits of the case--will be explained here nor is the Petition for Rehearing being transmitted to anyone other than the Clerk of the Illinois Appellate Court for filing in accordance with Supreme Court Rules. It is not the purpose or intent of the undersigned to have the merits of the case addressed except as provided by the Supreme Court Rules governing appeals. However, after completion of the appellate process, the "appropriate authority" under R.P.C. 8.3(b) may wish to give consideration to what the undersigned attorneys believe to be

gross deficiencies in Justice Hutchinson's competence to rightly judge cases through the use of valid legal reasoning, as noted by the Petition for Rehearing.

D] A Judge's most important task is to rightly judge a case in order to do justice between the parties. In the criminal context, a determination of guilt and imposition of punishment by a trial court of a person who is in fact innocent is a great miscarriage of justice even though "due process" was afforded (See, Kimbrough v. Parker, 407 Ill. 274, 95 N.E.2d 473 at 476 (1950), noting that even though due process has been afforded, justice may nonetheless have been denied: "The constitutional requirement of due process of law is not a guaranty that courts shall not commit error in the trial of causes, nor is it a guaranty against erroneous or unjust decisions by courts which have jurisdiction of the parties and the subject matter. Mere error does not deprive the losing party of the benefit of due process of law"). It is, however, small consolation to one in fact innocent of the crime of which he has been convicted that he was afforded "due process." Likewise, in the civil context and even though "due process of law" may have been afforded, justice is denied when a Court rules against a Plaintiff who is entitled to prevail under the facts and law or when a court rules in favor of a Plaintiff where the Defendant is entitled to prevail under the facts and/or the law. Far too many legal professionals, steeped in legal positivism, consider the affording of "due process" to be the "be all" and "end all" of the justice system.

In order to attempt to ensure that the judges of our State not only afford "due process" but actually rightly judge cases that everyday can and do affect the litigants' and their

families' lives, liberty, and property as well as our citizens' sense that our governments, both federal and state, and particularly their judicial branches are striving to do objective justice under God between and among citizens and their institutions, the judicial canons require a judge to be faithful to the law and patient with litigants and their attorneys.

A necessary corollary of rightly judging a case is that a judge make reasonable, good faith efforts in order to ascertain, understand, compare and evaluate the positions (including the arguments) of the respective parties.

Here, the record suggests that Justice Hutchinson chose not to do so. At page 4 of the Opinion, Justice Hutchinson describes the arguments raised by Plaintiff through her counsel as "enigmatic." Webster's Ninth New Collegiate Dictionary defines "enigmatic" as something hard to understand, obscure or mysterious. The Opinion's own choice of words (i.e. "enigmatic") shows at a minimum that Justice Hutchinson was having difficulty understanding Plaintiff's argument. Having not grasped or understood Plaintiff's argument, the Court should have conducted the oral argument which had been scheduled. Instead, the Court deliberately dispensed with oral argument (Exhibit C)[1] and acknowledged it was doing so under Supreme Court Rule 352(a) (Exhibit C). However, similar to the regulation of attorneys under Rule 341 concerning "sparing" use of

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[1]Such dispensing may possibly have also constituted a violation of Supplemental Administrative Rule A of the Illinois Appellate Court, Second District. See Exhibit A, page 1.

footnotes in brief writing, Supreme Court Rule 352(a), requiring that the power to dispense with oral arguments be used "sparingly", represents another exercise of our Supreme Court's supervisory power--but one directed to Appellate Court justices instead of lawyers--and represents our highest court's considered opinion that justice is best served when there is full discussion of issues and arguments--an even more important consideration when an Appellate Court determines, as it did here, that the case is of such importance as to warrant a published opinion under Supreme Court Rule 23(a).

If anything is "enigmatic," it is why Justice Hutchinson saw fit to dispense with oral argument instead of using it as an occasion to attempt to eliminate the "enigma" in her mind, making every reasonable effort under our law to do justice.

In point of fact, as discussed in the Petition for Rehearing and in the Brief of Plaintiff-Appellant (at pp.32-36), this case required a careful sentence-by-sentence parsing of statutory texts -- a task which the Opinion by Justice Hutchinson did not undertake and which further calls into question her judicial competence to rightly and impartially judge this case (and, by implication, other cases) assigned to her, and thereby be "faithful to the law" as required by Judicial Canon 3 (Ill.S.Ct.Rule 63A.(1)).

CONCLUSION

In almost twenty years of private practice, the undersigned Attorney Jaros has never been subjected to the arbitrary, unprovoked bias displayed toward him by a judge

or justice of any court including the Circuit Courts for Cook, DuPage and Will counties, the First and Second Districts of the Illinois Appellate Court, the U.S. District Court for the Northern District of Illinois, the U.S. Bankruptcy Court for the Northern District of Illinois, the Seventh Circuit U.S. Court of Appeals and the U.S. Tax Court.

In displaying partiality and bias, in imposing a sanction not based on a violation of any ascertainable standard and without notice and opportunity to respond, and in apparently allowing her bias against Plaintiff's counsel to influence her view of the merits of the case ("Plaintiff's counsel has managed to detract from his ... arguments," Opinion, p.4), Justice Hutchinson has denied Plaintiff and her counsel due process of law and equal protection thereof.

The undersigned attorneys believe that R.P.C. 8.3(b) requires a reporting of the foregoing violations of the Code of Judicial Conduct to the appropriate authority. Because R.P.C. 8.3(b) does not identify the appropriate authority, this memorandum (but not the Petition for Rehearing) is being

transmitted both to the presiding Justice of the Illinois Appellate Court, Second District, and to the Judicial Inquiry Board in accordance with Article VI, §15(c) of the Constitution of our State.

Respectfully submitted,
MARY G. KERGER and
ARTHUR G. JAROS, JR.

BY: RICHTER, JAROS & ROBINSON

BY: /s/ Arthur G. Jaros, Jr.
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Supreme Court, U.S.
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No. 98-1267

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

MARY G. KERGER,

Petitioner,

v.

BOARD OF TRUSTEES OF COMMUNITY COLLEGE DISTRICT NO. 502, COUNTY OF DUPAGE AND STATE OF ILLINOIS, a/k/a COLLEGE OF DUPAGE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Is there a substantial question of federal law or the United States Constitution when a state Court of Appeals strikes footnotes and reproduced copies of the statute and record from Petitioner's Appellate Court Brief for Petitioner's failure to comply with that State's Supreme Court rules regarding appellate briefs and where the State Supreme Court denied Petitioner's Petition for Leave to Appeal.

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STATEMENT OF THE CASE

A. Facts of the Case

Respondent is a community college operating in DuPage, Cook and Will Counties, Illinois (C. 347, ¶ 2). Petitioner was hired on either an annual or quarterly basis for three consecutive years as a temporary replacement for full-time faculty members of the College who had either taken a leave or died. (C. 454). Petitioner was so employed from the beginning of the 1993-94 school year through June 11, 1996. (C. 348, ¶ 5; C. 422).

On January 17, 1996, Respondent transmitted to Petitioner a Notice of Dismissal. (C. 348, ¶ 6; C. 422). Respondent advised Petitioner, through this notice, that she was being dismissed effective June 11, 1996. (C. 422).

Petitioner, while an employee of the Respondent, was covered by the Collective Bargaining Agreement (the "Agreement") between the Board of Trustees and the College of DuPage Faculty Association IEA/NEA (the "Association"). (C. 347, 348, ¶ 3; C. 358-421). Petitioner, after being notified of her dismissal, filed a grievance pursuant to Section E1 of the Agreement. (C. 385). At Step 2 of the grievance process, Petitioner demanded that a court reporter be allowed to attend the meeting and make a stenographic record of such meeting. (C. 2, ¶ 13). Petitioner alleged that the Agreement's provision allowed her to have a court reporter present at her grievance meeting to act as an advisor/observer. (C. 2, ¶ 9). When the Respondent's representative declined to conduct the grievance hearing in the presence of a court reporter, asserting that the Agreement did not allow for court reporters, Petitioner unilaterally canceled the meeting. (C. 2, ¶¶ 14, 15; C. 132). Thereafter, Petitioner initiated litigation. (C. 1).

B. Procedural History of the Case

Petitioner's initial complaint, filed with the Circuit Court on March 27, 1996, alleged that she was entitled to a court reporter at her Step 2 Grievance with College officials and sought an injunction ordering Respondent to allow a court reporter at the Step 2 Grievance meeting. (C. 1). Respondent filed a motion to dismiss based upon the Court's lack of subject matter jurisdiction. (C. 97-108). On July 22, 1996 the Circuit Court granted Respondent's motion to dismiss Petitioner's complaint, but granted Petitioner leave to file an amended complaint. (C. 15).

Petitioner filed an amended complaint on September 3, 1996 seeking a declaratory right to continued employment and tenure pursuant to the Illinois Community College Act, 110 ILCS 805/3B-1, *et seq*. Petitioner's amended complaint asserted that Respondent did not have sufficient basis under the Community College Act to dismiss her because her dismissal was not based on performance or financial exigency. (C. 347-422).

Respondent filed a motion to dismiss the amended complaint for failure to state a cause of action. (C. 425-435). The Circuit Court after a hearing on the motion dismissed Petitioner's amended complaint on September 26, 1996. While acknowledging that Respondent had not complied with every aspect of the Community College Act the Circuit Court held that Respondent acted within its common-law authority to terminate employees. Petitioner's subsequent motion for rehearing and summary judgment were denied by the Circuit Court on November 13, 1996. (C. 495).

On November 21, 1996, Petitioner filed a notice of appeal with the Illinois Court of Appeals, Second Judicial District ("Appeals Court"). (C. 497). Petitioner's Appellate Brief asserted that the Circuit Court's dismissal of her amended complaint was in error because Respondent had not complied with the Community College Act. (Petitioner's Appx. A). On October 17, 1997 the Appeals' Court, after reviewing the fully briefed appeal, issued an initial decision affirming the Circuit Court's decision. (App. 4-14).[1] The Appeals Court held that the Respondent had dismissed Petitioner in accordance with 110 ILCS 805/3B-3 of the Community College Act. The Appeals Court further held that even if the dismissal did not fully comport with the statute, the Community College Act did not eliminate a board's common-law authority to dismiss non-tenured teachers. (*Id.*) Additionally, the Appeals Court's initial decision struck from Petitioner's brief all footnotes and reduced statutory quotations within the brief as violative of Illinois Supreme Court Rule 341. (*Id.*)

On November 7, 1997 Petitioner filed a petition for rehearing. Petitioner's petition for rehearing alleged that the court's decision was wrong and that Illinois Supreme Court Rule 352(a) was violated. Petitioner also filed with the Appeals Court and the Illinois Supreme Court a document titled "Report of Violation of Code of Judicial Conduct Raising Question of Fitness for Office and Illinois Supreme Court Rule 361 and 63c Motion to Disqualify". (App. 64-84). The Report of Violation sought to disqualify Appellate Justice Susan Hutchinson, the author of the opinion, for having exhibited bias and/or prejudice against Petitioner

1. This initial opinion stated as follows: "The text of this opinion may be changed or corrected prior to the time of filing of Petition For Rehearing or the disposition of the same".

and/or her counsel by striking from her brief footnotes and reproduced copies of various statutes in violation of Illinois Supreme Court Rule 341. (*Id.*)

On December 4, 1997 the Appeals Court issued a revised opinion replacing its October 17, 1997 opinion. (App. 20-30). The new opinion still upheld the Circuit Court's dismissal of Petitioner's complaint because of the unlimited common law authority provided community college boards to dismiss non-tenured teachers pursuant to the Community College Act. However, this opinion determined that the Respondent had not dismissed Petitioner in accordance with 805/3B-3. The opinion also struck the footnotes contained in Respondent's Appellee Brief as violative of Illinois Supreme Court Rule 341(a) (*Id.*) Petitioner filed a second petition for rehearing with the Court of Appeals on December 18, 1997 which was denied on February 4, 1998.

On February 25, 1998 Petitioner filed a Petition for Appeal as a Matter of Right or in the Alternative Leave to Appeal with the Illinois Supreme Court. Petitioner asserted that the striking of certain portions of her Appellate Brief by the Court of Appeals violated due process of law. On June 3, 1998 the Illinois Supreme Court denied Petitioner's appeal without comment. (App 1-2).

Petitioner initially attempted to file her Writ of Certiorari with this Court on December 8, 1998. Petitioner's Writ was rejected by this Court on or about December 8, 1998 for failing to comply with the Rules of the Supreme Court. On February 8, 1998 Petitioner's corrected Petition for Certiorari was filed.

REASONS FOR DENYING THE WRIT

I.

THIS COURT SHOULD NOT GRANT A WRIT OF CERTIORARI WHEN NO SUBSTANTIAL ISSUE OF FEDERAL LAW OR THE UNITED STATES CONSTITUTION EXISTS.

Petitioner asserts that the Illinois Appellate Court's decision to strike footnotes and reduced statutory quotations, from her Appellate Brief for violating Illinois Supreme Court Rule 341 violated her constitutional rights "guaranteed by the 14th Amendment to the U.S. Constitution". Petitioner's attempt to "constitutionalize" her unhappiness and dissatisfaction with the Court of Appeals' and Illinois Supreme Court's decisions is without merit.

It is uncontroverted that this Court does not have jurisdiction to grant a Writ of Certiorari where there is no substance or merit to any substantial question or federal constitutional claim.

> A party may assert a right, title, privilege, or immunity without even color for such assertion, and if that were alone sufficient to give this Court jurisdiction, a vast number of cases might be brought here simply for delay or speculative advantage.

Iowa v. Rood, 187 U.S. 87, 23 S. Ct. 49, 51 (1902). The mere fact that Petitioner asserts a clause of the Constitution as being violated is not in itself sufficient unless there is a plausible foundation for such claim. "A real, and not a fictitious federal

question is essential to the jurisdiction of this Court of the judgments of state courts". *Sawyer v. Piper*, 189 U.S. 154, 23 S. Ct. 633, 634 (1903).

In relevant part Illinois Supreme Court Rule 341(a) provides that an appellee's brief shall be limited to . . . "75 pages if not printed . . ." It further provides that "footnotes, if any, shall be used sparingly". (App. 42). Illinois appellate courts have consistently stated that "[t]hese rules are not merely suggestions . . . and it is within our discretion to strike [a party's] briefs and dismiss the appeal based on violations of these rules". *Geers v. Brichta*, 248 Ill. App. 3d 398, 618 N.E.2d 531, 533 (1st Dist. 1993), citing *Marengo v. Loffelmacher*, 236 Ill. App. 3d 690, 603 N.E.2d 80 (1992). The *Geers* court stated that

> we struck defendant's original brief for violations of Supreme Court Rule 341(a) . . . which limits briefs to 75 pages and provides that neither narrow margins nor any other device shall be employed to evade the page limitation.

Id.

Petitioner's Appellant Brief, as noted by the Court of Appeals, utilized photocopied reproduction of statutes and pages from the record of proceedings "in a greatly reduced, dual-column format". (App. 8 and App. 24). The Court determined that Petitioner had apparently done so to "evade" the 75 page limitation. The Court of Appeals also noted Petitioner utilized numerous footnotes in their briefs which contained arguments in violation of Rule 341's admonition that footnotes be used sparingly.[2]

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2. The Court of Appeals also struck all footnotes from Respondent's Appellee Brief in its revised opinion. (App. 24).

This Court has held that matters involving the alleged erroneous construction of a state's statute by the state's supreme court does not rise to a denial of due process guaranteed by the Fourteenth Amendment. *Neblet v. Carpenter, et al.*, 350 U.S. 297, 302, 59 S. Ct. 170 (1938). "We are, therefore, without jurisdiction to review the state court's decision of any of these questions". *Id.* Similarly, in *Hammond Packing Co. v. Arkansas*, 212 U.S. 322, 29 S. Ct. 370 (1909), it was held that a state court did not violate the due process clause of the Fourteenth Amendment when striking defendant's answer and entering a default judgment for failure to comply with a pre-trial order. Additionally, this Court has held the

> [t]he expression of legal rights is often subject to certain procedural rules: the failure to follow those rules may result in a curtailment of the right . . . but the mere use of procedural rules does not, in itself, violate the defendant's due process rights.

See Insurance Corp. v. Compagine Des Bauxites, 456 U.S. 694, 102 S. Ct. 2099 (1982) (Court rejected petitioner's claim that imposition of sanctions for failure to comply with a discovery order violated due process of law).

In the instant case, Petitioner brought her claim that the Court of Appeals striking of her footnotes and copies of statutes in her appellate brief violated the Supreme Court Rules. The Illinois Supreme Court is certainly empowered to interpret its own rules. It did so in the instant case and rejected Petitioner's claim of a due process violation. As such, this Court, consistent with the cases set forth herein, does not have jurisdiction over this matter.

II.

THE CASES CITED BY PETITIONER IN NO WAY SUPPORT HER CLAIM OF DUE PROCESS VIOLATION.

Moreover, Petitioner's Petition for Writ of Certiorari fails to cite any case supportive of her contention. The few cases cited by Petitioner do not support her claim that striking of footnotes and reproduced statutes from her Appellant Brief violated her constitutional right to due process: *Wisconsin v. Constantineau*, 400 U.S. 433, 473, 91 S. Ct. 507 (1971). The Court struck down a Wisconsin statute that allowed individuals to post the names of persons who are excessive drinkers and prevent such persons from purchasing or receiving alcohol. The Court held that

> where a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential;

Veillon v. Exploration Services, Inc., 876 F.2d 1197 (5th Cir. 1989) (Court of Appeals ruled that the imposition of sanctions involving a $750 fine under Rule 11 of the Federal Code of Civil Procedure did not violate counsel's due process. While notice and an opportunity to be heard are required before a deprivation of property occurs, notice may come in many shapes, including the Rule itself); *Barnett v. County of Cook*, 388 Ill. 251 (1944) (taxpayer challenged the constitutional validity of a county taxing statute. The court ruled that the statute failed to provide adequate notice before levying a tax on a person's property).

The case cited by Petitioner involves due process relating to actual loss of property, *i.e.*, a fine or tax. It is clear that none of the cases cited by Petitioner address Illinois Supreme Court Rule 341 and clearly none relate to whether or not due process is violated by striking of a party's footnotes or reproduced statutes in a brief. As such, these cases are wholly unsupportive of Petitioner's Writ.

III.

THE COURT OF APPEALS DID NOT DISREGARD OR REFUSE TO ADDRESS PETITIONER'S ARGUMENTS.

Petitioner also asserts that her due process rights were denied because the Court of Appeals refused to acknowledge and address her arguments. Again, Petitioner's assertions are baseless. The Court of Appeals fully addressed the arguments set forth by the Petitioner in her initial brief and her reply brief. While the Court of Appeals struck the parties footnotes and copies of statutes contained in Petitioner's Brief, it did not, as Petitioner would like this Court to believe, strike any of her claims or arguments.

The Court of Appeals' decision clearly reveals the careful consideration and analysis given to the parties arguments and interpretation of the relevant statute, the Illinois Community College Act. The fact that the Court of Appeals struck Petitioner's (and Respondent's) footnotes and copies of various statutes reproduced in Petitioner's brief does not in any way mean that Petitioner's arguments were not considered. In fact, the section of the Statute, 805/3B-2, upon which now Petitioner appears to rest her claim, was struck by the Court of Appeals as reproduced and copied in Petitioner's brief, but the arguments made by both parties

regarding the statute were not. In fact, Respondent reproduced this section of the statute in its Appellee Brief for the Court's consideration. While Petitioner may dislike and disagree with the resolution of her arguments and claims by the Court of Appeals and the Illinois Supreme Court, she cannot, with any merit, assert that her arguments were not addressed and considered.

IV.

RULINGS ADVERSE TO PETITIONER'S CLAIMS DO NOT CONSTITUTE BIAS ON THE PART OF THE COURT.

Petitioner also asserts that the Court of Appeals violated Illinois Supreme Court Rule 63(c). In relevant part, Rule 63(c) requires a judge to disqualify herself from a case if she has actual or perceived bias. Petitioner raised a claim of bias with the Illinois Supreme Court. The Illinois Supreme Court denied the claim without comment.

Once again, Petitioner is urging this Court to review issues of interpretation and construction of statutes by the state's highest court. As asserted earlier herein, this Court must decline such invitation. *See Neblet v. Carpenter, et al., supra.*

Moreover, Petitioner's claim of bias by Justice Hutchinson is meritless. The only basis asserted for this claim is the Court's opinion adverse to Petitioner. "The entry of an adverse judgment, standing alone, is not evidence of prejudice". *People v. Hall*, 157 Ill. 2d 324, 335, 626 N.E.2d 131 (1993). If Petitioner's claim were true, every party who lost a case, or who was reprimanded by the Court could claim a violation of Rule 63(c). Such an interpretation is preposterous.

CONCLUSION

Based on the foregoing arguments and authorities, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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